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In Th Matter Of:

UNITHERM FOOD SYSTEMS v. SWIFT-ECKRICH

**** CONTAINS ATTORNEYS' EYES ONLY PORTIONS ****

SYED HUSSAIN

February 12, 2002

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[1] UNITED STATES DISTRICT COURT
[2] WESTERN DISTRICT OF OKLAHOMA
[3] UNITHERM FOOD SYSTEMS, INC..))
[4] an Illinois corporation, and)
[5] JENNIE-O-FOODS, INC., a)
[6] Minnesota corporation,)
[7] Plaintiffs,)
[8] vs.) No. CIV 01-347-C
[9] SWIFT-ECKRICH, INC., d/b/a)
[10] CONAGRA REFRIGERATED FOODS,)
[11] a Delaware corporation,)
[12] Defendant.)
[13] THIS DEPOSITION CONTAINS CONFIDENTIAL
[14] MATERIAL
[15]
[16] The deposition of SYED HUSSAIN, called
[17] for examination, taken before GAIL LIVIGNI, a
[18] Notary Public within and for the County of Will,
[19] State of Illinois, and a Certified Shorthand
[20] Reporter of said state, at Suite 200, 184 Schuman
[21] Boulevard, Naperville, Illinois, on the 12th day of
[22] February, A.D., 2002, at 11:00 o'clock a.m.
[23]
[24]

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[1] PRESENT:
[2] FELLERS, SNIDER, BLANKENSHIP, BAILEY &
[3] TIPPENS, P.C.,
[4] (100 North Broadway, Suite 1700,
[5] Oklahoma City, Oklahoma 73102-8820
[6] 405-232-0621), by:
[7] MR. GREG A. CASTRO,
[8] appeared on behalf of the Plaintiffs,
[9]
[10] CHRISTIE, PARKER & HALE, LLP,
[11] (350 West Colorado Boulevard, Suite 500
[12] Pasadena, California 91109-7068
[13] 626-795-9900), by:
[14] MR. ROBERT A. SCHROEDER,
[15] appeared on behalf of the Defendants;
[16]
[17] ALSO PRESENT:
[18] MS. LESLIE E. NASH, Paralegal
[19] Christie, Parker & Hale, LLP.
[20]
[21] REPORTED BY: GAIL LIVIGNI, C.S.R.
[22] CERTIFICATE NO. 84-1965
[23]
[24]

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[1] MR. CASTR : To begin, Bob, this is pursuant
[2] to the notice to take the deposition?
[3] MR. SCHROEDER: Well, actually, no, the notice
[4] is a 30(b)(6) notice. We're producing him —
[5] MR. CASTRO: As a witness, someone who will
[6] appear at trial and testify?
[7] MR. SCHROEDER: That's correct, but he is not
[8] designated under 30(b)(6).
[9] MR. CASTRO: Okay.
[10] (WHEREUPON, the witness was
[11] duly sworn.)
[12] SYED HUSSAIN,
[13] called as a witness herein, having been first duly
[14] sworn, was examined and testified as follows:
[15] EXAMINATION
[16] BY MR. CASTRO:
[17] Q: Mr. Hussain, have you ever given your
[18] deposition before?
[19] A: No.
[20] Q: Let me give you a few ground rules.
[21] We're here today. You're under oath just as if you
[22] are in front of a judge and a jury. Do you
[23] understand that?
[24] A: Yes.

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[1] Q: What you need to do is the court
[2] reporter here is taking down everything that you
[3] say and that I say, so you need to give audible
[4] responses, not an uh-uh or shake your head. Can we
[5] have that understanding?
[6] A: Sure.
[7] Q: Also I'm not here to try to trick you
[8] today. I am just going to ask you some questions
[9] about certain matters about your testimony or
[10] expected testimony in this case. Do you
[11] understand?
[12] A: Sure.
[13] Q: Therefore, if I ask you a question if
[14] you don't understand it, would you tell me to
[15] rephrase it?
[16] A: Sure.
[17] Q: Good. As a result of that
[18] understanding, can we have an agreement that if you
[19] respond to my question, that means you understood
[20] it. Is that fair?
[21] A: That's fair.
[22] Q: Okay. Mr. Hussain, could you give us
[23] your date of birth and where you were born?
[24] A: My name is Hussain. You said Mr. Singh.

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[1] Q: Hussain.
[2] A: You can call me Syed. My date of birth
[3] is January 4th, 1949.
[4] Q: And where were you born?
[5] A: I was born in India.
[6] Q: Could you give us your educational
[7] background, please?
[8] A: I have an undergraduate from India and a
[9] Master's and Ph.D. from the United States.
[10] Q: What's your undergraduate degree in?
[11] A: It's in agricultural sciences.
[12] Q: What about your Master's?
[13] A: Master's is in food science and
[14] nutrition emphasis education.
[15] Q: And your Ph.D.?
[16] A: Adult education, curriculum instruction.
[17] Q: I'm sorry?
[18] A: Adult education, curriculum instruction.
[19] Q: And your two degrees, where were they
[20] conferred upon you?
[21] A: Master's — is that what you're asking?
[22] Q: Yes.
[23] A: From the University of Tennessee.
[24] Q: What year?

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[1] A: 1975. And Ph.D. from the University of
[2] Missouri in Kansas City, 1983.
[3] Q: Were you employed while you were in
[4] school at the University of Tennessee?
[5] A: Employed by who?
[6] Q: By anyone. Were you working?
[7] A: I worked for the University in the
[8] laboratory, and I did part-time work at the grocery
[9] store.
[10] Q: At a grocery store?
[11] A: Yes.
[12] Q: What type of lab work did you do?
[13] A: I was the instructor for the lab class.
[14] Q: What did you teach?
[15] A: Animal nutrition.
[16] Q: What about while you were at the
[17] University of Missouri, did you work?
[18] A: I worked for Conagra, Swift & Company.
[19] Q: When did you become employed at
[20] Swift & Company?
[21] A: 1975.
[22] Q: So is it fair to say upon graduating
[23] from the University of Tennessee with your
[24] Master's, you took a job with you said Swift &

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[1] Company?
[2] A: Yes, which is now owned by Conagra.
[3] Q: Was that an on-campus interview? Is
[4] that how you became employed with Swift & Company,
[5] or did you go to their offices and interview?
[6] A: At the office, at the plant.
[7] Q: What job did you interview?
[8] A: I interviewed for the job of laboratory
[9] assistant at that time.
[10] Q: Just laboratory assistant?
[11] A: Lab — we call them lab technicians, I
[12] think, yes.
[13] Q: Was that full-time or part-time?
[14] A: Full-time.
[15] Q: What were your responsibilities and
[16] duties as a lab technician?
[17] A: Proximate analysis, microbiological
[18] testing.
[19] Q: Well, for a non-technical person like
[20] myself, what does proximate analysis mean?
[21] A: Moisture, protein, fat, salt.
[22] Q: In foods?
[23] A: In foods and meat products.
[24] Q: Just meat products or other types of

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[1] foods?
[2] A: At that time, meat products only.
[3] Q: Turkey, chicken or —
[4] A: Yes, all meat products, meat and
[5] poultry.
[6] Q: Okay. Were you in school at that time?
[7] A: No — you mean in my Ph.D. program?
[8] Q: Yes. After you graduated from the
[9] University of Tennessee, did you start immediately
[10] your Ph.D. program?
[11] A: Three years — two years later.
[12] Q: Okay. And did Conagra pay for that
[13] schooling?
[14] A: Yes.
[15] Q: Was that part of your employment — I'm
[16] sorry, go ahead.
[17] A: When you say did Conagra pay, yes, a
[18] certain percentage of it.
[19] Q: What percent?
[20] A: I think it was 80 percent, 80 or 75.
[21] Q: Was that part of the offer that was made
[22] to you in 1975?
[23] A: No.
[24] Q: It came on later?

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[1] A: Right.
[2] Q: From '75 to '77, did you remain a lab
[3] technician?
[4] A: No. Actually from '75 to '77, I was
[5] promoted from lab technician to lab manager.
[6] Q: Would that be in '76?
[7] A: '77, I think.
[8] Q: Okay. And what was a lab manager?
[9] A: In charge of all the other technicians
[10] and all the lab work.
[11] Q: How many technicians were you
[12] responsible for?
[13] A: Two.
[14] Q: Two?
[15] A: Yes.
[16] Q: Same type of work, proximate analysis?
[17] A: Microbiological testing and others.
[18] Q: Give me your next job with the company
[19] or your next promotion?
[20] A: Quality assurance inspector.
[21] Q: When did you become quality insurance
[22] inspector?
[23] A: Quality assurance inspector.
[24] Q: Oh, quality assurance.

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[1] A: 1978.
[2] Q: Conagra or this Swift & Company, that
[3] was in Kansas?
[4] A: Kansas City, Kansas.
[5] Q: All right. And as quality assurance
[6] inspector, what were your duties and
[7] responsibilities?
[8] A: Inspection of incoming products,
[9] maintenance of specifications, quality control.
[10] Q: Is that still — is that just for meat
[11] and poultry?
[12] A: Still meat and poultry.
[13] Q: And after that, were you promoted to
[14] another job after quality assurance inspector?
[15] A: I was made the head of the quality
[16] assurance inspectors which is they used to call it
[17] a group leader.
[18] Q: What year was that?
[19] A: 1980. I'm going by memory.
[20] Q: Yes. In fact, why don't you just give
[21] me so I don't have to — we can speed this up if
[22] you'd like, if it's okay with your Counsel, just
[23] give me from '80 forward to present day of how your
[24] jobs have changed?

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[1] A: '80, I was group leader. Then in '82, I
[2] became process control manager.
[3] Q: Still in Kansas City, Kansas?
[4] A: Still in Kansas City. '83, I was
[5] transferred to Oakbrook, Illinois to work in the
[6] R & D Center as a food technologist.
[7] Q: How long were you a food technologist in
[8] the R & D Center?
[9] A: For a couple of years.
[10] Q: Okay. So '85?
[11] A: Became project manager.
[12] Q: Project manager of the R & D Center in
[13] Oakbrook?
[14] A: For a group.
[15] Q: How many in a group?
[16] A: It depends. Sometimes there were two,
[17] three, four technologists.
[18] Q: All right. And how long were you
[19] project manager?
[20] A: About a year or so. In '85, I was a
[21] pilot plant manager.
[22] Q: You were a project manager in '85,
[23] right? Then became a group manager at that time as
[24] well? Is that what that is, you're a manager for a

Page 12

[1] group in 1985 of two or three other food
[2] technologists?
[3] A: Yes.
[4] Q: All right. I thought you said then in
[5] '85, you became —
[6] A: Pilot plant manager.
[7] Q: Pilot plant manager. What's pilot plant
[8] manager?
[9] A: Pilot plant manager handles all the
[10] plant tests, all the pilot plant tests.
[11] Q: When you say handles, do you mean —
[12] A: I handle all the food technologists and
[13] the pilot plant technicians.
[14] Q: You supervise?
[15] A: Yes.
[16] Q: Where is the pilot plant located?
[17] A: At that time, it was in Oakbrook,
[18] Illinois.
[19] Q: I'm going to make sure I understand.
[20] When you talked about the R & D Center, is that the
[21] same as the pilot plant?
[22] A: R & D Center has the pilot plant.
[23] Q: Okay. What makes up the pilot plant?
[24] What does it consist of?

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[1] A: Pilot plant consists of prototype
[2] equipment.
[3] Q: I'm sorry?
[4] A: Prototype equipment.
[5] Q: Okay.
[6] A: To make different meat and other
[7] products, meat products, or other kinds of
[8] products.
[9] Q: So there would be ovens?
[10] A: There would be grinders, choppers,
[11] ovens.
[12] Q: Is this equipment supplied by third
[13] parties, or is it manufactured by Conagra?
[14] A: These are equipment that we buy and keep
[15] in our place.
[16] Q: Equipment you buy from third parties,
[17] and you install it in your facility, in your pilot
[18] plant, is that correct?
[19] A: I didn't buy any.
[20] Q: I'm sorry, Conagra buys it and installs
[21] it?
[22] A: Right.
[23] Q: Is there ever an occasion where a vendor
[24] or a third party manufacturer will bring their

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[1] equipment into the pilot plant on loan, so to
[2] speak?
[3] A: For testing.
[4] Q: Okay. Is there also an occasion where
[5] they may even lease it to you or rent it to you for
[6] testing?
[7] A: During my period, there was, as I
[8] recall, there was no leasing during my tenure.
[9] Q: They just kind of let you use it?
[10] A: Or bring it for their testing, or we
[11] bring it for testing.
[12] Q: In other words, you ask these third
[13] party manufacturers if you can use say an oven so
[14] that you can test some product on how it cooks?
[15] A: I would not, but the project leaders or
[16] the people who are scientists would ask and I
[17] facilitate all of that.
[18] Q: You supervise that?
[19] A: Uh-huh.
[20] Q: You approve of it, is that correct?
[21] A: No.
[22] Q: Who approves it?
[23] A: Could be the director of Research &
[24] Development, vice president of Research &

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[1] Development.
[2] Q: Mr. Salm? Could be Mr. Salm?
[3] A: At this time. At that time, he was not
[4] the V.P. of Research & Development.
[5] Q: Who was the head of Research &
[6] Development in 1985 when you were the pilot plant
[7] manager?
[8] A: I worked for J.B. Weatherspoon. That's
[9] my recollection.
[10] Q: Was J.B. Weatherspoon the head of
[11] Research & Development when you transferred to
[12] Oakbrook in 1983?
[13] A: No.
[14] Q: When did he become head of Research &
[15] Development, if you know?
[16] A: My recollection is '84, '85. About '84,
[17] '85, he was.
[18] Q: Do you know how long Mr. Weatherspoon
[19] remained the head of Research & Development?
[20] A: Until 1995, '96.
[21] Q: Is there any other facility that's owned
[22] by Conagra, if you know, that has a pilot plant
[23] other than the one in Oakbrook?
[24] A: In the Conagra system?

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[1] Q: Yes.
[2] A: If you are talking about all the Conagra
[3] systems, there are many, many pilot plants.
[4] Q: There are?
[5] A: I'm not involved in every one, but there
[6] are many pilot plants.
[7] Q: Are there pilot plants that pertain to
[8] meat and poultry other than this facility at
[9] Oakbrook?
[10] A: The ones that I know about, you mean?
[11] Q: Yes, only your knowledge.
[12] A: Okay. The only one for R & D is this
[13] one.
[14] Q: All right. So you're not aware of any
[15] other R & D facility that deals with poultry and
[16] meat products?
[17] A: At the plant level, some have like St.
[18] Charles, Illinois has a power plant, too.
[19] Q: What do they produce at that St. Charles
[20] facility?
[21] A: Dry sausage, summer dry sausage
[22] products.
[23] Q: Anywhere else?
[24] A: Not to my knowledge right now.

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[1] Q: The Wells plant?
[2] A: Wells, Minnesota?
[3] Q: The Wells plant doesn't have a pilot
[4] facility, does it?
[5] A: It does not.
[6] Q: Okay. Tests with regards to product,
[7] meat and poultry, are they run at this pilot plant?
[8] A: Yes.
[9] Q: What type of tests are run?
[10] A: In the power plant here when I was
[11] the —
[12] Q: Yes, in '85.
[13] A: All kinds of tests. Any new product
[14] development or modification of existing products,
[15] any other testing of products was done in the pilot
[16] plant.
[17] Q: Pilot plant manager, so you handled all
[18] plant tests. That means that you approved of any
[19] testing that was done at that facility, correct?
[20] A: When you say approve, can you define
[21] what that means?
[22] Q: Well, I'm not sure. Tell me what your
[23] responsibilities were. You mentioned that you
[24] handled all plant tests, and I want to understand

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[1] what it is that you did in 1985.
[2] A: Food technologists and scientists would
[3] design a test and then give it to me, and I use my
[4] technicians in the pilot plant to conduct those
[5] tests based on those parameters. You keep asking
[6] if I approve it. I don't know what that process
[7] means to you, but there were tests that I did on my
[8] own, too, because I'm a scientist as well.
[9] Q: Okay. Would there be an occasion where
[10] third parties, people that are not employed by
[11] Conagra, would come to you and say we've got a
[12] concept or idea, we'd like to test it at your pilot
[13] plant? That would happen on occasion, correct?
[14] A: No.
[15] Q: That never occurred?
[16] A: Not during my tenure as the pilot plant
[17] manager.
[18] Q: How long were you the pilot plant
[19] manager?
[20] A: About two years.
[21] Q: There would be occasion where your own
[22] employees, employees of Conagra, would want to run
[23] some type of test, but they would need a piece of
[24] equipment or an apparatus from a third party,

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[1] correct?
[2] A: That's correct.
[3] Q: How would they go about making that
[4] presentation to you whereby you would then go to
[5] that third party vendor to obtain that piece of
[6] equipment or apparatus?
[7] A: One, they could get it themselves. Two,
[8] they would ask me to facilitate that.
[9] Q: When they would get it themselves, would
[10] they have to have it approved by you? Would there
[11] be some kind of approval you would need to give?
[12] A: It has to be USDA certified or approved
[13] equipment.
[14] Q: Would they need to have it approved by
[15] you?
[16] A: By me, no.
[17] Q: I guess the only thought would be — the
[18] reason I ask that question is if every technician
[19] decided they wanted to bring the same oven in to
[20] run some tests, and without possibly you knowing
[21] what was going on among all the food technicians,
[22] you may have three or four of the same type of
[23] ovens running the test. That's why I asked if you
[24] are the ones that approves to make sure that

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[1] everybody is on the same page.
[2] MR. SCHROEDER: That's not a question so far.
[3] BY MR. CASTRO:
[4] Q: So no one had to go through you to
[5] obtain a piece of equipment?
[6] A: I'm not following your question.
[7] Q: Well, is it your testimony that for
[8] someone to bring in an apparatus or a piece of
[9] equipment to run testing, all they needed to do was
[10] make sure that it was USDA approved?
[11] A: And —
[12] Q: And what's the second?
[13] A: USDA approved is the first requirement.
[14] Second is that the other condition if there are
[15] any — do we have to pay to get this equipment, who
[16] is going to pay the freight charges and all that
[17] kind of stuff.
[18] Q: And they would have to go to you to get
[19] that approval, correct?
[20] A: Not approval, just let me know how
[21] they're accommodating all that.
[22] Q: Okay. Would they do that in writing or
[23] they could just knock on your door?
[24] A: Two ways. One is the test design that

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[1] they put together and then verbally.
[2] Q: It could be one or the other?
[3] A: Or both.
[4] Q: Verbally or test design?
[5] A: Or both.
[6] Q: Test design, a written document that was
[7] a test design, wasn't required at that time?
[8] A: Was it not required?
[9] Q: Right.
[10] A: Are you saying that?
[11] Q: I'm asking you was it required?
[12] A: As far as I was the pilot plant manager,
[13] it was required that they have to submit a test
[14] design to me.
[15] Q: And what would that test design include?
[16] A: Objective, what is the objective of the
[17] test, what equipment will be used, how data will be
[18] collected, and how product will be packaged and
[19] disposed of.
[20] Q: Pilot plant manager, you ended or you
[21] ceased being pilot plant manager in 1987?
[22] A: Got promoted.
[23] Q: Promoted to what?
[24] A: Senior project manager.

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[1] Q: And what were your duties and
[2] responsibilities?
[3] A: It involved both product development and
[4] technical services.
[5] Q: Explain to me how it changed — your
[6] duties and responsibilities changed from being a
[7] pilot plant manager to being senior project
[8] manager?
[9] A: It's a promotion.
[10] Q: Right. And you said you worked with
[11] product development and technical —
[12] A: Technical services meaning going in the
[13] plants and troubleshooting.
[14] Q: The pilot plant?
[15] A: No.
[16] Q: Which plant?
[17] A: The present position that you got there,
[18] senior project manager.
[19] Q: And that was at what facility?
[20] A: All the facilities.
[21] Q: Where?
[22] A: I would go to different plants.
[23] Q: Around the country?
[24] A: Whatever plants Conagra or Swift had at

Page 23

[1] that time.
[2] Q: Who was your boss, your direct
[3] supervisor in 1987?
[4] A: Jim Reed, as I recall.
[5] Q: And what title did Jim Reed have? Is
[6] that R-e-e-d or R-e-i-d?
[7] A: R-e-e-d.
[8] Q: Okay.
[9] A: My recollection he was director of
[10] technical services.
[11] Q: How long were you senior project
[12] manager?
[13] A: A couple of years.
[14] Q: What did you do after that?
[15] A: I became project manager for dry
[16] sausage.
[17] Q: Was that in St. Charles?
[18] A: It included the plant in St. Charles.
[19] Q: What other plants?
[20] A: And also Cadhy, Omaha.
[21] Q: I'm sorry?
[22] A: C-a-d-h-y, Cadhy, Omaha.
[23] Q: Was that a promotion or a demotion?
[24] A: That's a promotion.

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[1] Q: Promotion. I just saw that your area
[2] diminished.
[3] A: No, it's getting more specialized now.
[4] Q: More specialized, okay. Didn't mean to
[5] offend you.
[6] So now you're in the dry sausage. Is
[7] that when you met Mr. Salm?
[8] A: No. Mr. Salm I met during the time I
[9] was pilot plant manager or this senior project
[10] manager.
[11] Q: Which one, when you were pilot plant
[12] manager or senior project manager?
[13] A: My recollection is right around that
[14] time, power plant manager.
[15] Q: Around '85 to '87?
[16] A: Yes.
[17] Q: How did you come about meeting Mr. Salm?
[18] What were the circumstances?
[19] A: He got hired by our company.
[20] Q: Was he a contemporary of yours, a
[21] supervisor, subordinate?
[22] A: Colleague of mine. He is a colleague.
[23] Q: He was on the same level as you were at
[24] the time that he was hired?

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[1] A: Yes.
[2] Q: Was he a pilot plant manager?
[3] A: No.
[4] Q: Was he a senior project manager?
[5] A: I don't know exact title, but he was a
[6] food scientist.
[7] Q: Okay. What were your duties and
[8] responsibilities as the project manager for dry
[9] sausage?
[10] A: Product development, technical services,
[11] troubleshooting.
[12] Q: What's dry sausage?
[13] A: Dry sausage has a definition that you
[14] want to know.
[15] Q: I mean I don't know what dry sausage is,
[16] so I'm going to ask you.
[17] A: Genoa salami, that is dry sausage.
[18] Summer sausage, that's a type of dry sausage.
[19] Q: All right, that's dry sausage. As
[20] project manager, were you — you talked about
[21] product development. Did you experiment with
[22] browning sausage?
[23] A: In the dry sausage?
[24] Q: Yes.

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[1] A: Yes, by smoke applications, if that's
[2] what he means by that.
[3] Q: You say by smoke applications. Explain
[4] that to me, please.
[5] A: Using liquid and natural smoke on and in
[6] the product.
[7] Q: In it or on it?
[8] A: In and on, both.
[9] Q: Is this in 1989?
[10] A: Uh-huh.
[11] Q: Who did you work with with regards to
[12] browning this dry sausage? Did you work with
[13] anyone at the company?
[14] A: Stan Seavey.
[15] Q: I'm sorry?
[16] A: Stan Seavey, S-t-a-n, S-e-a-v-e-y.
[17] Q: Anyone else?
[18] A: That's it.
[19] Q: How long were you the project manager
[20] for dry sausage?
[21] A: About two years.
[22] Q: During '89 and '91, did you work with
[23] Prem Singh?
[24] A: Yes.

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[1] Q: In what areas did you work with Prem
[2] Singh? And now we're just into '89 to '91, all
[3] right?
[4] A: Right. With Prem Singh, on pepperoni is
[5] one of the things that comes to mind.
[6] Q: What were you doing with pepperonis?
[7] A: Can I ask my Counsel is any of this
[8] confidential information? This is confidential
[9] right here?
[10] MR. SCHROEDER: Well, how much detail do you
[11] want?
[12] MR. CASTRO: I don't need much.
[13] MR. SCHROEDER: Can you answer it in general
[14] terms without giving confidential information?
[15] MR. CASTRO: We can always mark this
[16] deposition, Bob, you know — I don't think someone
[17] like Howard so much cares about what you do with
[18] sausage, but maybe you think others might. We do
[19] have a protective order.
[20] MR. SCHROEDER: Well, let me ask the witness.
[21] Can you answer his question in general terms
[22] without revealing confidential information?
[23] BY MR. CASTRO:
[24] Q: Pepperonis, did you brown — did it deal

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[1] with browning pepperoni?
[2] A: No, it had nothing to do with browning.
[3] Let's say that we worked with ingredients.
[4] Q: Okay, that's fine. And that was from
[5] '89 to '91. Did you work with Prem Singh on
[6] anything else between '89 to '91?
[7] A: Not to my recollection.
[8] Q: All right. That's a good point. What
[9] did you do today, sir, to prepare for this
[10] deposition?
[11] A: What did I — came here.
[12] Q: What else? Did you look at anything?
[13] A: No, not today.
[14] Q: What about yesterday? Anytime before
[15] this deposition today, tell me what you did to
[16] prepare for this deposition?
[17] A: Just flipped through the pages of my
[18] file.
[19] Q: What file? Do you have a personal file?
[20] A: No, no. File on smoking.
[21] Q: So you have a file at your desk on
[22] smoking?
[23] A: I have many files. Yes, one of the
[24] files is smoking.

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[1] Q: One of those files is smoking?
[2] A: Uh-huh.
[3] Q: And that's your own personal file that
[4] you've maintained for how long?
[5] A: Ever since I've worked on many projects.
[6] '87, '89, whatever.
[7] Q: Have you turned that file over to your
[8] Counsel?
[9] A: Yes.
[10] Q: So a copy of that file has been made and
[11] turned over to Mr. Schroeder?
[12] A: Right.
[13] Q: All right. What did you look at in
[14] particular in that file?
[15] A: Nothing in particular, just skimmed
[16] through it.
[17] Q: For how long?
[18] A: 40 minutes, 45 minutes.
[19] Q: When?
[20] A: Yesterday afternoon.
[21] Q: Did you talk with anybody about the
[22] file?
[23] A: No.
[24] Q: Did you talk with Prem Singh about your

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[1] testimony?
[2] A: I have not seen Prem since yesterday.
[3] Q: I mean before yesterday, have you spoken
[4] to Prem Singh about your testimony here today?
[5] A: No.
[6] Q: Have you spoken to Mr. Schroeder about
[7] your testimony here today?
[8] A: Yesterday we spoke.
[9] Q: For how long?
[10] A: Half an hour, 45 minutes.
[11] Q: Have you spoken to Mr. Salm about your
[12] testimony here today, yesterday or any time before
[13] today?
[14] A: Yesterday Mr. Salm was in our meeting,
[15] yes.
[16] Q: Okay. Anyone else in that meeting?
[17] A: Dennis Gott.
[18] Q: Anyone else?
[19] A: And Leslie.
[20] Q: Had you spoken to Mr. Gott before
[21] yesterday regarding your testimony here today?
[22] A: No, except a phone call asking me to be
[23] there for the meeting yesterday.
[24] Q: Okay. Anyone else? Have you spoken to

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[1] Mr. Howard Kroll regarding your testimony here
[2] today?
[3] A: Who is Howard Kroll?
[4] Q: You don't know H ward Kroll?
[5] A: Don't know who that is.
[6] Q: You worked with pepperonis with Prem
[7] Singh, and you talked just now about how you have a
[8] file that you've turned over to Mr. Schroeder that
[9] dealt only with smoking.
[10] Now, when you say smoking, do you mean
[11] browning and smoking or just smoking?
[12] A: Both.
[13] Q: Okay. And you testified that that
[14] was — that file went back to 1987?
[15] A: '89.
[16] Q: To '89. How many pages are in that
[17] file? I mean is it 10, is it 30, is it 100,
[18] approximate?
[19] A: Approximately a hundred plus.
[20] Q: And does it have a cover page? Describe
[21] the cover or the contents.
[22] A: It's a folder.
[23] Q: A folder. Does it have a name on it?
[24] A: It has a tab on it.

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[1] Q: What's the tab say?
[2] A: Smoke.
[3] Q: Smoke. Now, these notes that are in
[4] that file — well, what's in that file? Your
[5] notes?
[6] A: My notes, correspondence.
[7] Q: Between?
[8] A: Between me and any other people that
[9] dealt with —
[10] Q: People within the company and without
[11] the company?
[12] A: Outside the company, too.
[13] Q: So you dealt and consulted with people
[14] outside the company regarding smoking and browning?
[15] For example, Red Arrow?
[16] A: We spoke to Red Arrow about smoking and
[17] browning, right.
[18] Q: Okay. Any other companies?
[19] A: Hickory Specialties.
[20] Q: Anyone else? And this is '89 to '91.
[21] A: Alkar Oven, A-k-a-r.
[22] Q: So they're an oven manufacturer. And
[23] then you've got two — correct me if I am wrong —
[24] then you've got two, Hickory Specialties and Red

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[1] Arrow, are manufacturers of liquid smoke, correct?
[2] A: Right.
[3] Q: Any other oven manufacturers you spoke
[4] with between '89 and '91?
[5] A: Stein.
[6] Q: What about Enersyst?
[7] A: I can't recall that.
[8] Q: Anyone other than Stein?
[9] A: Those are the two that come to mind.
[10] Q: Why would you consult with Hickory
[11] Specialties and Red Arrow regarding smoking or
[12] browning?
[13] A: They may have different products.
[14] Q: Well, you don't manufacture liquid
[15] smoke, correct?
[16] A: Yes.
[17] Q: So they had products that they could
[18] provide to you?
[19] A: Correct.
[20] Q: What about Alkar Oven and Stein?
[21] A: They have the equipment.
[22] Q: To do what?
[23] A: Smoking, cooking, browning.
[24] Q: Would it be fair to say that their ovens

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[1] have different characteristics from each other so
[2] that each oven that — excuse me, each oven that
[3] may be provided to you would embark different
[4] characteristics on the meat product?
[5] A: I'm not an expert on ovens.
[6] Q: In your opinion, did these two ovens,
[7] two different manufacturers have different ovens
[8] which would display different characteristics on
[9] the meat product?
[10] MR. SCHROEDER: If you have an opinion.
[11] BY MR. CASTRO:
[12] Q: If you have an opinion.
[13] A: I don't have an opinion.
[14] Q: Other than price of an oven, is there
[15] another reason why you would talk to two different
[16] oven manufacturers regarding browning and smoking
[17] between '89 and '91?
[18] A: Well, at Alkar, I know people. Alkar
[19] Oven is something we have in our plants, so I
[20] talked with them for that reason. And Stein I
[21] think, as I remember, they came to see us, so
[22] that's why I talked to them.
[23] Q: They tried to sell you an oven?
[24] A: They all want to sell something.

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[1] Q: Right. That's really the reason why you
[2] talk to manufacturers is they're trying to sell you
[3] an oven or a different way to brown something or
[4] cook something, correct?
[5] MR. SCHROEDER: Objection as compound.
[6] BY THE WITNESS:
[7] A: Not necessarily.
[8] BY MR. CASTRO:
[9] Q: Why else do you talk to manufacturers of
[10] ovens?
[11] A: Just get an idea of what they have in
[12] terms of how the ovens work.
[13] Q: How they may cook something, how these
[14] ovens may cook something, right?
[15] A: Or the advantages or disadvantages of
[16] the ovens we have.
[17] Q: In other words —
[18] A: To compare.
[19] Q: Comparing the ovens they're trying to
[20] sell you with existing ovens, is that correct?
[21] A: Possible.
[22] Q: Is that correct?
[23] A: Possible.
[24] Q: It's happened before?

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[1] A: What do you mean it's happened before?
[2] Q: Between '89 and '91, you had oven
[3] manufacturers approach you to try to sell you an
[4] oven stating that their ovens were a better product
[5] than your existing ovens, correct?
[6] A: Yes.
[7] Q: And, in fact, manufacturers approached
[8] you and advised you they thought that their ovens
[9] could brown a product or smoke a product better
[10] than your existing ovens, correct?
[11] A: In that period of time?
[12] Q: Yes.
[13] A: Not that I recall that specifically they
[14] were saying brown better or anything.
[15] Q: What about after that period of time?
[16] A: They may have. I don't have
[17] recollection.
[18] Q: We'll get back to that.
[19] A: Sure.
[20] Q: After '91, what — I guess you were
[21] project manager for dry sausage, is that right,
[22] from '89 to '91?
[23] A: Uh-huh.
[24] Q: After '91, what did you do?

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[1] A: I became product development for
[2] Butterball Turkey Company.
[3] Q: What month in '91?
[4] A: I don't recall the month.
[5] Q: Was it a promotion?
[6] A: Yes.
[7] Q: A big promotion?
[8] A: I don't know what you mean by big
[9] promotion. It's a promotion.
[10] Q: Was it a bigger promotion than --
[11] A: It's a higher raise.
[12] Q: Was it a bigger promotion than say
[13] senior project manager to project manager for dry
[14] sausage?
[15] A: Sure.
[16] Q: Was it a bigger promotion from being
[17] pilot plant manager to being senior project
[18] manager?
[19] A: Sure.
[20] Q: Okay. Do you remember what time of year
[21] that was that you got this promotion?
[22] A: Second quarter of the year, I guess.
[23] Q: Are you married?
[24] A: Yes, I am.

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[1] Q: How long have you been married?
[2] A: 24 years.
[3] Q: How many children?
[4] A: Four.
[5] Q: Ages?
[6] A: I have a 21 year old daughter. I have a
[7] 20 year old daughter. I have a son who is 18 and a
[8] younger one who is 16.
[9] Q: You have two older daughters?
[10] A: Yes.
[11] Q: Do they go to school?
[12] A: Yes.
[13] Q: Where do they go to college?
[14] A: The oldest one goes to Illinois State
[15] University. She is a senior.
[16] Q: What does she study?
[17] A: Undergraduate.
[18] Q: What does she study?
[19] A: She is a biology major.
[20] Q: Biology. Does she want to be a doctor?
[21] A: I hope so.
[22] Q: What about your next oldest daughter, is
[23] she in college?
[24] A: She also is third year college.

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[1] Q: Where?
[2] A: University of Illinois at Chicago.
[3] Q: What does she study?
[4] A: She's a biology major.
[5] Q: Does she want to be a doctor, too?
[6] A: I hope so.
[7] Q: Now, I ask you if they want to be
[8] doctors, and you say I hope so. Is that their
[9] career path?
[10] A: That's what they want to be.
[11] Q: They want to go to medical school?
[12] A: They all want to go to medical school.
[13] Q: And then you have a son?
[14] A: He is a freshman at college.
[15] Q: Is he also a biology major?
[16] A: He has not decided yet.
[17] Q: You've got two girls that want to go on
[18] to higher education. That can be expensive, can't
[19] it? Are they on scholarship?
[20] A: All of them are.
[21] Q: You must be proud of them?
[22] A: Very proud.
[23] Q: Product development for Butterball
[24] Turkey, that was in 1991, and you think it was the

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[1] second quarter. What were your responsibilities
[2] and duties as the product -- in charge of product
[3] development or director?
[4] A: In charge.
[5] Q: Were you called a director?
[6] A: No, I worked for a director.
[7] Q: Who did you work for?
[8] A: Bill Schwartz.
[9] Q: I'm sorry?
[10] A: Bill.
[11] Q: Okay. Schwartz?
[12] A: S-c-h-w-a-r-t-z.
[13] Q: All right. And you said he was a
[14] director?
[15] A: Of product development for Butterball.
[16] Q: Okay. Were you an assistant director or
[17] just what was your title?
[18] A: Butterball project manager.
[19] Q: Now, in '89 when you were project
[20] manager -- I'm sorry, I sometimes digress -- where
[21] did you office, do you remember?
[22] A: Well, from Oakbrook, we got transferred
[23] to Downers Grove, so the exact day, I don't recall.
[24] We were in Oakbrook the same R & D Center when I

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[1] moved from Kansas City to — when I was transferred
[2] from Kansas City to Oakbrook. And from Oakbrook,
[3] we moved our office to Downers Grove.
[4] Q: So Oakbrook, you moved the whole pilot
[5] plant facility to Downers Grove?
[6] A: The whole R & D Center was moved.
[7] Q: And what year was that, if you remember?
[8] A: I don't remember the exact year.
[9] Q: Around '89, '90?
[10] A: '89, '90, yes. '87.
[11] Q: Now, '87 to '89-90, you officed there
[12] with Prem Singh, would that be fair to say, and the
[13] other scientists?
[14] A: All were in the same room, in the big
[15] area.
[16] Q: Did you office next to him or down the
[17] hall?
[18] A: The tables were arranged where we faced
[19] one another, you know.
[20] Q: Oh, like this here today?
[21] A: Just like that.
[22] Q: What about in '91 when you became the
[23] manager for product development, where did you
[24] office?

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[1] A: In Downers Grove. You have all cubicles
[2] at that time.
[3] Q: So you had a cubicle next to Prem?
[4] A: No.
[5] Q: But he had one in that same location?
[6] A: Yes.
[7] Q: I mean, what, 10 feet away?
[8] A: I didn't measure it but somewhere.
[9] Q: Yes. You could get up and walk around
[10] the corner and say "How was your breakfast, Prem?"
[11] A: Yes.
[12] Q: Okay. And how many of there were you in
[13] this particular area in these cubicles?
[14] A: 12, at least 12. Not just food
[15] scientists. There are other people, cure people
[16] and all that, quality assurance people.
[17] Q: Now, what were your responsibilities and
[18] duties as the manager for product development for
[19] Butterball Turkey?
[20] A: Can I take a break and get some water?
[21] MR. CASTRO: Quick break.
[22] (WHEREUPON, a short break was
[23] taken.)
[24] BY MR. CASTRO:

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[1] Q: Back on the record. Mr. Hussain, you
[2] had indicated that you were in '91, second quarter,
[3] you believe, became a — by the way, if there is
[4] any time in a break you think of something that
[5] maybe you might have made a mistake on or an error
[6] or you recall something, just remind me and I'll go
[7] back to it, okay, make sure your testimony is
[8] accurate as possible. Do we have that agreement?
[9] A: So far I don't think I made any
[10] mistakes, so we should be okay.
[11] Q: Good. As product development — as
[12] manager of product development for Butterball, what
[13] were your duties and responsibilities?
[14] A: Development of new product, line
[15] extensions of existing product.
[16] Q: Line extensions for existing product?
[17] A: Yes.
[18] Q: What else?
[19] A: And troubleshooting.
[20] Q: Now, you were also in charge of product
[21] development back in 1989 as project manager for dry
[22] sausage, correct?
[23] A: Uh-huh.
[24] Q: And you were also in charge of product

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[1] development as senior project manager in 1987,
[2] correct?
[3] A: Yes.
[4] Q: Were you in charge of product
[5] development in 1985 as pilot plant manager?
[6] A: No, I was pilot plant manager at that
[7] time.
[8] Q: Okay. Now, as product development, in
[9] charge of product development, that's just what it
[10] says, isn't it?
[11] A: Right.
[12] Q: New products that come out?
[13] A: Right.
[14] Q: You've got to — not being a patent
[15] lawyer really, bear with me here. If there is a
[16] patent you or one of your group people wanted to
[17] file, you've got to gather information concerning
[18] that type of patent, right? Is that part of what
[19] you did in product development? Did you file
[20] patents?
[21] A: No.
[22] Q: Well, who filed the patents if you
[23] didn't? I say you, anybody within your group in
[24] product development, who was responsible for filing

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[1] those patents up through this period of employment?
[2] **MR. SCHROEDER:** Objection, lacks foundation.
[3] **BY MR. CASTRO:**
[4] **Q:** If you came up with an idea — well, go
[5] ahead. Go ahead and answer if you can.
[6] **A:** Go ahead and what?
[7] **Q:** Who would file the patents on your
[8] behalf or get those patents prepared — let me not
[9] make it compound. Who would provide the
[10] information to file patents?
[11] **MR. SCHROEDER:** Objection, lacks foundation.
[12] **BY MR. CASTRO:**
[13] **Q:** If you can answer it, go ahead.
[14] **A:** You have to restructure your question.
[15] I'm lost.
[16] **Q:** Well, you would be responsible for
[17] making sure that these new developments you
[18] discovered were protected, correct?
[19] **A:** I'm not sure. Which new development are
[20] you talking about?
[21] **Q:** Well, you said product development, you
[22] come up with new products, new compositions, new
[23] processes, correct?
[24] **A:** Right.

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[1] **A:** N .
[2] **Q:** How long were you product manager?
[3] **A:** For Butterball?
[4] **Q:** I'm sorry, manager for product
[5] development, yes.
[6] **A:** From 1991 to '95.
[7] **Q:** What new products did you develop
[8] between 1991 and '95? When I say you, I mean
[9] within your group.
[10] **A:** I personally developed the smoked and
[11] the baked turkey.
[12] **Q:** I'm sorry?
[13] **A:** I personally developed the smoked and
[14] the baked turkeys and the honey roasted turkey.
[15] **Q:** Did you say honey roasted?
[16] **A:** Uh-huh. That's a yes.
[17] **Q:** And you said you personally developed
[18] those. That means you invented those? You
[19] invented the processes by which those were made?
[20] **A:** Yes.
[21] **Q:** Well, tell us when you invented the
[22] process for smoked — well, let me ask this. Was
[23] your development of the smoked and baked — those
[24] are two different products?

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[1] **Q:** Would you ever file patents on those
[2] processes?
[3] **A:** I did not.
[4] **Q:** Would you cause patents to be filed for
[5] those new processes?
[6] **A:** I did not. I have not.
[7] **Q:** Have you ever filed a patent?
[8] **A:** No, never.
[9] **Q:** Have you ever been named as an inventor
[10] on a patent?
[11] **A:** No, I have not.
[12] **Q:** While you were the project manager for
[13] dry sausage, did anyone within your group cause to
[14] be filed a patent on any new developments or
[15] technologies that you discovered?
[16] **A:** That I discovered?
[17] **Q:** Yes.
[18] **A:** No.
[19] **Q:** What about anyone within your group that
[20] you supervised?
[21] **A:** No.
[22] **Q:** What about in 1991 as product — as
[23] manager of product development, did you know of any
[24] patents that were filed within your area?

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[1] **A:** Yes.
[2] **Q:** Smoked turkey and baked turkey?
[3] **A:** Uh-huh.
[4] **Q:** And then a honey roasted turkey?
[5] **A:** Right.
[6] **Q:** Did you invent the processes to develop
[7] or manufacture those products at the same time?
[8] **A:** Yes.
[9] **Q:** When did you invent that process?
[10] **A:** From that period from '91 to '95.
[11] **Q:** Well, was there a point in time —
[12] **A:** Until we went to the market with it.
[13] **Q:** When did you go to the market with this
[14] smoked, baked or honey roasted turkey? In '95?
[15] **A:** About that time.
[16] **Q:** So at that time, you were commercially
[17] producing the smoked, baked and honey roasted
[18] turkey that you invented between 1991 and 1995?
[19] **A:** That is correct.
[20] **Q:** Could you explain to us what that
[21] process was in order to manufacture that product,
[22] and if they're different, please explain them?
[23] Let's start first with smoked.
[24] **A:** You want me to give the generic process

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[1] without giving you the details? I don't know if
[2] you need those. Raw turkeys are injected with a
[3] solution.
[4] Q: Okay.
[5] A: To attain certain percent gain, and
[6] these are then transferred into a smoke house.
[7] Either they're naturally smoked or they're applied
[8] with a liquid smoke depending on what process I
[9] have or what product I have, cooked to a certain
[10] internal temperature, chilled to a certain internal
[11] temperature, packaged, shipped.
[12] Q: These are in batch houses, these
[13] products that were manufactured?
[14] A: These are in batch houses.
[15] Q: Any of these products produced by what
[16] we would call an in-line process?
[17] A: Define what in-line process means to
[18] you.
[19] Q: Sure. You take the product and you
[20] either skin on or skin off — well, let's take if
[21] you take the skin off, you remove the purge, dry
[22] the product as you remove the purge, dip it in
[23] liquid smoke, caramel, run it through an oven for
[24] seven to ten minutes, comes out the other end.

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[1] A: In the case of this, you are talking
[2] about whole turkeys. This is whole turkeys.
[3] Q: Whole turkeys. These were not whole
[4] muscle meat products?
[5] A: At this stage of the period, this is a
[6] whole turkey. This is the turkey — in the case of
[7] the baked would be for your Thanksgiving dinner,
[8] fully prepared ready to go. And then the other
[9] smoked could be a raw product. So if you're
[10] talking about a whole turkey when you said
[11] something about purged and all, that doesn't apply
[12] in this scenario.
[13] Q: What is cooked in the bag?
[14] A: These are not cooked in a bag.
[15] Q: Okay. Are those the products that
[16] Butterball — were they called smoked and baked and
[17] honey roasted? Were those the three brands?
[18] A: Butterball smoked turkey, Butterball
[19] baked turkey, and Butterball honey roasted turkey.
[20] Q: Okay. Any other new products you
[21] developed?
[22] A: All smoked parts of turkeys. Smoked
[23] parts in turkeys, you want me to define what those
[24] are?

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[1] Q: What do you mean by parts?
[2] A: When you cut up different parts of a
[3] turkey, drumstick, thigh, breast meat, neck, all
[4] these were individually smoked for — to be sold as
[5] items.
[6] Q: Okay. Anything else?
[7] A: I also developed the fresh tray packet.
[8] Q: I'm sorry?
[9] A: How do I define this fresh tray packet?
[10] It's case-ready products.
[11] Q: Anything else?
[12] A: That's all that comes to mind right now.
[13] Q: How was this product, this smoked, the
[14] baked and the honey roasted, different from other
[15] products that you were producing at the time?
[16] A: These are whole turkeys.
[17] Q: Whole birds?
[18] A: Whole birds. Totally different product
[19] from what we were producing before.
[20] Q: Any other differences? Any other
[21] difference in characteristics?
[22] A: Fully cooked, ready to eat right out of
[23] the bag.
[24] Q: Color the same?

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[1] A: Beautiful smoked color.
[2] Q: Was is that, a golden brown?
[3] A: Looked like a golden brown.
[4] Q: Okay. That would be probably for the
[5] smoked. Was the baked turkey a golden brown, or
[6] was it a little lighter?
[7] A: It's a caramel color.
[8] Q: And the honey roasted, was it a caramel
[9] color or a golden brown?
[10] A: It's golden brown.
[11] Q: Okay. So the two products that you
[12] developed between '91 and '95 were these whole
[13] birds?
[14] A: Right.
[15] Q: Whole turkeys that you put in batch
[16] houses that produced this golden brown product,
[17] right?
[18] A: Right.
[19] Q: Okay. And then you developed these —
[20] A: Smoked parts.
[21] Q: Smoked parts. Would those be put in
[22] batch houses?
[23] A: Yes.
[24] Q: And then you talked about this

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[1] case-ready. Does that deal with turkey products?
[2] A: Turkey parts, right.
[3] Q: Turkey parts. What is that in the deli
[4] counter or what is that?
[5] A: Fresh area, fresh tray pack area.
[6] Case-ready is an item itself in the grocery store.
[7] Q: Okay. You said line extensions for
[8] existing products. What do you mean by that?
[9] A: Turkey based hotdog, turkey based
[10] bologna, salamis, pastramis, you name it.
[11] Q: Kind of a derivative of the turkey
[12] itself?
[13] A: Anything you can think of turkey.
[14] Q: Turkey chili, do you make turkey chili?
[15] A: I did make turkey chili, too, and it
[16] tasted pretty fine.
[17] Q: Anything else within that line
[18] extensions for existing products?
[19] A: Those are the things that come to mind
[20] right now.
[21] Q: It didn't include taking the whole bird
[22] and then taking parts of it, as we would call whole
[23] muscle meat, did your development include that
[24] area?

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[1] A: Yes.
[2] Q: Whole muscle meat products?
[3] A: Yes.
[4] Q: Between '91 and '95, did you develop any
[5] new technologies or processes for whole muscle meat
[6] products?
[7] A: Slice and serve.
[8] Q: What year was that?
[9] A: '92, as I recall.
[10] Q: Tell me, sir, if you would, what slice
[11] and serve was?
[12] A: Slice and serve is a whole muscle turkey
[13] breast product cooked in a bag to a certain
[14] internal temperature. The bag is removed, purged
[15] or gelatin that is on top around the product is
[16] washed off, and then either if it's a smoked
[17] product or it's a caramel product, it's treated
[18] with that. Either smoke is applied or caramel is
[19] applied.
[20] Q: What happened after the smoke would be
[21] applied?
[22] A: The product would be chilled.
[23] Q: It wouldn't be put through an oven?
[24] A: It is put through an oven.

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[1] Q: What kind of oven?
[2] A: Again, like I said, that's not my area
[3] of expertise. We have an oven that is a
[4] combination of different heating elements, forced
[5] air and all that.
[6] Q: It wasn't a batch oven?
[7] A: It's a continuous oven.
[8] Q: Yes.
[9] A: But in the case of smoked slice and
[10] serve, it's a batch oven.
[11] Q: But not with regards to caramel?
[12] A: No.
[13] Q: What year was this product sold
[14] commercially?
[15] A: That product was existing even before I
[16] got that job there.
[17] Q: Oh, so you didn't develop slice and
[18] serve?
[19] A: No, no. You asked line extensions,
[20] remember?
[21] Q: Okay, that's right. This is a line
[22] extension?
[23] A: When we say line extension, it means if
[24] you did anything to it.

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[1] Q: What did you do to it differently?
[2] A: Maybe added some carotene into it or use
[3] different equipment, do certain things.
[4] Q: At some point in time, you used
[5] Maillose, correct?
[6] A: Yes, as a test.
[7] Q: Well, you produced product with UPC
[8] codes, correct, and sold it to the market?
[9] A: None of this Maillose produced product
[10] was for the market, it was not. It was all test
[11] products.
[12] Q: What year did you use the Maillose?
[13] A: On the slice and serve, you mean?
[14] Q: Yes.
[15] A: '95, '96.
[16] Q: You said it would be put through a
[17] continuous oven. For how long? What was the
[18] residence time?
[19] A: Minutes, and I don't recall the exact
[20] number.
[21] Q: Seven to ten minutes?
[22] A: Possible.
[23] Q: What was the shrink on that product?
[24] A: Very low shrink.

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[1] Q: 1 to 2 percent?
[2] A: 3.
[3] Q: 1 to 4 percent?
[4] A: Yes, 1 to 4 percent.
[5] Q: So today is it your testimony that the
[6] slice and serve when it dealt with the — when
[7] smoke applied, it was put back in a batch house, is
[8] that correct?
[9] A: At the time I was involved, yes, to
[10] apply the smoke.
[11] Q: But when you applied the caramel —
[12] A: It went through a —
[13] Q: Continuous oven?
[14] A: Right.
[15] Q: Why the difference in the two?
[16] A: They're two different processes.
[17] Q: Maillose is a caramel, correct?
[18] A: That's how Red Arrow defines it.
[19] Q: And that's how you understand it?
[20] A: Yes, it's a caramel.
[21] Q: So you started using Maillose in '95 or
[22] '96 in this slice and serve line, is that correct?
[23] A: Could have been earlier, too. Right now
[24] I can't think of the exact date, but I had been the

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[1] first one to use Maillose.
[2] Q: First one to use Maillose within your
[3] company?
[4] A: That's what my recollection is, yes.
[5] Q: And that would have been in '95 or '96?
[6] A: Actually '91, '90.
[7] Q: What did you use Maillose for in '90?
[8] A: Used it in brown and serve, tried it on
[9] bacon and on many turkey type of products.
[10] Q: Whole muscle meat products?
[11] A: Whole muscle meat products, yes.
[12] Q: Brown and serve, what's that, explain
[13] that to me?
[14] A: It's a link similar to your hotdog but
[15] smaller than the hotdog that's served for
[16] breakfast.
[17] Q: Did you produce product for commercial
[18] use with the Maillose in 1990?
[19] A: These are all prototype tests.
[20] Q: These were all tests that had to be
[21] approved by the USDA?
[22] A: All tests have to be submitted for USDA
[23] approval.
[24] Q: How long do you keep those submissions

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[1] to the USDA? How long does the company keep them,
[2] if you know?
[3] A: I don't know.
[4] Q: So in '90, you also used Maillose for
[5] whole muscle meat products?
[6] A: Yes.
[7] Q: Tell me what you did in regards to the
[8] application of Maillose in regards to whole muscle
[9] meat products?
[10] A: Applied it as a dip or a drenching,
[11] spray, atomized it.
[12] Q: Was this when you were project manager
[13] for dry sausage?
[14] A: No. '90, '91, as I said. That's my
[15] recollection.
[16] Q: That was after you became the manager of
[17] product development for Butterball Turkey Company?
[18] A: Correct.
[19] Q: Okay. Who did you work with at Red
[20] Arrow?
[21] A: John Shoop.
[22] Q: Anyone else?
[23] A: Gary Underwood, Jim Schnook.
[24] Q: Anyone else?

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[1] A: Those are the names that I recall.
[2] Q: Did you ever work with Ron Ratz, if you
[3] can recall?
[4] A: No.
[5] Q: And so in '90, '91, they would provide
[6] you Maillose; that is "they," Red Arrow, to test,
[7] prototype tests, is that your testimony, prototype
[8] tests?
[9] A: Right.
[10] Q: For whole muscle meat products?
[11] A: And other products.
[12] Q: Yes?
[13] A: Yes.
[14] Q: Now, with regards to the whole muscle
[15] meat products when you used the Maillose, would you
[16] run those through a linear oven, a continuous oven?
[17] A: I tried many ovens, Alkar Oven, Fitzman
[18] oven, Lincoln Grove.
[19] Q: Okay. Now, at this time, you weren't
[20] working with Prem Singh, were you?
[21] A: I'm working for Butterball Turkey
[22] Company.
[23] Q: What I mean by that is were you and Prem
[24] Singh collaborating on this Maillose?

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[1] A: No.
[2] Q: In '90 and '91, do you know what Prem
[3] Singh was doing with respect to, you know, whole
[4] muscle meat turkey products?
[5] A: I did not know what he was doing in
[6] specific.
[7] Q: These tests that were done, are those
[8] kept, retained? I'm going to show you some tests
[9] in a minute, and I'm just — you will see some
[10] other records, but do you maintain those records of
[11] testing that are done on these products back in '90
[12] and '91?
[13] A: Like I said, in the file, there are
[14] documents that I have kept, yes.
[15] Q: In that file that you have?
[16] A: Small, uh-huh.
[17] Q: Now, that file, is that — you said it
[18] has smoke on it. Does it have your name on it?
[19] A: Yes.
[20] Q: Let me make sure I'm clear here. When I
[21] say it has your name, is there a cover page or a
[22] cover folder that has smoke and Syed Hussain?
[23] A: It's a smoke tab, it's in a folder and
[24] has all the documents in it.

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[1] Q: And is your name on that folder?
[2] A: Many places if there is.
[3] Q: What I mean is your name on the cover of
[4] that folder?
[5] A: It's in my office in my cabinet.
[6] Q: I understand that. I'm just trying to
[7] see what that folder looks like. I want to make
[8] sure that everything has been produced to us that's
[9] in that folder.
[10] A: Counsel has seen it. It's a folder.
[11] And if you are asking if the name is on top of
[12] that, I don't recall. It's all my documents are in
[13] there.
[14] Q: Okay. And there would be tests back in
[15] '91 —
[16] A: And beyond and after that, '90 and
[17] beyond.
[18] Q: What type of assistance would John Shoop
[19] or Gary Underwood provide to you in 1991 with
[20] respect to this Maillose?
[21] MR. SCHROEDER: Objection as calling for
[22] speculation.
[23] BY MR. CASTRO:
[24] Q: Go ahead, you can answer.

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[1] A: Technical type of information.
[2] Q: They'd tell you how much Maillose to
[3] apply to the product, right, give you advice on
[4] what type of or what quantity of Maillose to put on
[5] the whole muscle meat product, correct?
[6] A: Different scenarios, yes, possible.
[7] Q: After all, they were experts in regards
[8] to Maillose, correct?
[9] A: It is their product.
[10] Q: Yes. They invented it, didn't they?
[11] A: They invented it.
[12] Q: Right. So they'd come to your facility
[13] and they would try to outline for you what weight
[14] of Maillose to put on any particular product,
[15] correct?
[16] A: How to make the dilutions.
[17] Q: Okay. How to get the product where you
[18] wanted it in the form of golden brown or dark brown
[19] or honey brown, correct?
[20] A: Different color shades.
[21] Q: Right. In 1991, were you able to
[22] produce a golden brown whole muscle meat product?
[23] A: That term golden brown is what I used.
[24] Q: No, I'm asking you. Were you able to

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[1] produce a whole muscle meat product that was golden
[2] brown in 1991?
[3] A: I don't know the word golden brown, but
[4] it was brown in color.
[5] Q: In your eyes, was it golden brown?
[6] A: Show me what a golden brown is.
[7] Q: Well, earlier you testified that these
[8] other products were golden brown. I believe you
[9] testified that the smoked product and the honey
[10] roasted product were both, in your words, golden
[11] brown.
[12] My question now is was this whole muscle
[13] meat product produced in 1991 with Maillose, was it
[14] golden brown?
[15] A: Very similar to golden brown. If golden
[16] brown is the color you have identified.
[17] Q: Was Prem Singh aware of these tests you
[18] were doing with this whole muscle meat product and
[19] with Red Arrow?
[20] A: Yes.
[21] Q: Was he involved with the tests that you
[22] were doing with Red Arrow with respect to whole
[23] muscle meat products?
[24] A: In the slice and serve, he was involved

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[1] in some of my testings.
[2] Q: Now, slice and serve, what year was
[3] that? Was that after 1991?
[4] A: Yes.
[5] Q: Would that have been 1995 or '96?
[6] A: Yes.
[7] Q: It wouldn't be before 1995, though,
[8] would it?
[9] A: I worked on slice and serve before. I
[10] can't tell the exact dates. I worked for a long
[11] time on slice and serve.
[12] Q: When did you cease being product
[13] development manager for Butterball Turkey Company?
[14] A: I became director of product development
[15] for Butterball in 1995, '96, yes, after Bill
[16] Schwartz left.
[17] Q: Is that the position you hold today?
[18] A: No, I am the director of process
[19] improvement.
[20] Q: Did you move from director of product
[21] development for Butterball to director of process
[22] improvement?
[23] A: In between, I was director of technical
[24] services.

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[1] Q: I should have known. When you mentioned
[2] troubleshooting as product manager, what were your
[3] responsibilities there?
[4] Let me ask you, were you having problems
[5] with ovens?
[6] A: I am not an oven guy.
[7] Q: So what did it include then if it wasn't
[8] ovens?
[9] A: Let's say the product has a problem in
[10] the plant either in the processing area.
[11] Q: Would it include if you were
[12] dissatisfied with the way the product looked?
[13] A: Might be marketing would be dissatisfied
[14] with that, yes.
[15] Q: All right. But they'd come to you when
[16] they were dissatisfied with the product, is that
[17] fair to say?
[18] A: On occasions, yes.
[19] Q: And then it was your responsibility to
[20] try to —
[21] A: Troubleshoot.
[22] Q: Well, I'm going to look for another
[23] word. Was it your responsibility to look for
[24] another way to produce that product to make it look

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[1] better?
[2] A: Troubleshooting is problem-solving.
[3] That's what I did. If there was a problem with the
[4] product, I went and solved the problem.
[5] Q: When did you become director of
[6] technical services?
[7] A: 1999.
[8] Q: Did you stay at the same location?
[9] A: Yes.
[10] Q: Still in the same area where you've got
[11] cubicles for offices?
[12] A: No. In 1999, I moved to the towers.
[13] Q: What's that?
[14] A: Towers is our corporate office on 2001
[15] Butterfield Road.
[16] Q: Okay. But before '99 and from say '91
[17] to '99, you were in the cubicles with others?
[18] A: 1995, when I became director of product
[19] development for Butterball, I moved into an office.
[20] Q: Okay. What are your responsibilities
[21] and duties — what were they for director of
[22] technical services?
[23] A: Problem-solving, training, statistical
[24] process control.

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[1] Q: Was that a promotion?
[2] A: Big time.
[3] Q: Now you're director of process
[4] improvement?
[5] A: Uh-huh.
[6] Q: You became that — you've held that
[7] title since when?
[8] A: September of 2001.
[9] MR. SCHROEDER: You said '01.
[10] THE WITNESS: September, 2001, that's correct.
[11] BY MR. CASTRO:
[12] Q: And your responsibilities and duties as
[13] director of process improvement?
[14] A: Continuous improvements at the plant
[15] level, implementing statistical process control at
[16] the plant level.
[17] Q: Anything else?
[18] A: Training and development of employees
[19] and supervising at the plant level.
[20] Q: So if I understand your testimony
[21] correctly, from '91 to '95, you were product
[22] development manager for Butterball Turkey Company,
[23] is that correct?
[24] A: That is correct.

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[1] Q: Okay. And you were in an office that
[2] you shared by cubicle space with 10 or 11 other
[3] technicians?
[4] A: Food scientists.
[5] Q: Food scientists. One of those being
[6] Prem Singh?
[7] A: That's correct.
[8] Q: As the manager for product development,
[9] did you oversee the filing of patents with respect
[10] to new technologies that your technicians invented?
[11] A: No.
[12] Q: Who was responsible for that, if anyone?
[13] A: I don't know that.
[14] Q: You've been listed as a witness in this
[15] case, and there has been no description as of yet
[16] as to what you'll testify to. Do you know what you
[17] intend to testify to at the time of trial in this
[18] case?
[19] MR. SCHROEDER: I will object to the question
[20] as lacking foundation and caution the witness not
[21] to reveal any attorney/client confidential
[22] information. If he knows what he's going to
[23] testify about, he can say, if.
[24] BY THE WITNESS:

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[1] A: I have no prepared things to say. I
[2] will speak the truth.
[3] MR. CASTRO: Bob, can you tell us what he is
[4] going to testify to at the time of trial, the
[5] general description as would be required under Rule
[6] 26?
[7] MR. SCHROEDER: Well, he's going to testify as
[8] to his knowledge and participation of the
[9] development of the patented process at
[10] Swift-Eckrich.
[11] BY MR. CASTRO:
[12] Q: When did you first learn of the
[13] development of this patented process? Do you know
[14] the patented process we're talking about here
[15] today?
[16] A: Yes, I saw the patent.
[17] Q: When did you look at the patent?
[18] A: Yesterday.
[19] Q: Did you read it?
[20] A: I read it, yes.
[21] Q: Sir, I ask you to identify that if you
[22] would?
[23] A: Yes, this is the patent.
[24] Q: When did you first learn of the

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[1] development of this patented process or the
[2] patented process as described in Exhibit 1? We'll
[3] mark it as Deposition Exhibit 1.
[4] A: Around the end of 1999, early 2000.
[5] Q: So that's the first time you learned of
[6] the development of that patented process?
[7] A: That's correct.
[8] Q: You weren't involved in the development
[9] of that patented process?
[10] A: I was not involved in that.
[11] Q: Were you involved in participation in
[12] the development of that patented process?
[13] A: I was not involved in the development of
[14] any kind.
[15] Q: Who invented it?
[16] A: Prem Singh is the inventor of this
[17] process.
[18] Q: Because he filed the patent?
[19] A: And that's what we learned in the
[20] building that he is the inventor of that process.
[21] Q: Well, do you have any firsthand
[22] knowledge that Prem Singh invented the process
[23] that's described in that '027 Patent?
[24] A: Do I have knowledge that he did?

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[1] Q: Yes, firsthand knowledge.
[2] A: From hearing, I heard that he developed
[3] the process. I was not involved with him, no.
[4] Q: You just heard from someone in 1999 that
[5] he developed the process that's described in this
[6] '027 patent?
[7] A: Correct.
[8] Q: And you didn't have any involvement?
[9] A: I had no involvement in the patent.
[10] Q: Who told you that he invented it
[11] process?
[12] A: In a weekly meeting, it was mentioned
[13] that Prem has developed this and they're applying
[14] for patent.
[15] Q: Let me hand you, sir, what I will mark
[16] as Deposition Exhibit 2. I'll refer you to page 4
[17] of this document. Look at Interrogatory No. 1, if
[18] you would, and I'll read it to you. It says, "With
[19] respect to the '027 Patent state, (b) the earliest
[20] dates of actual reduction to practice in this
[21] country of said claimed subject matter."
[22] Do you see that? Do you see that 1(b)
[23] right here?
[24] A: Uh-huh.

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[1] Q: Do you see the response to that
[2] Interrogatory? It says, "Between February of 1989
[3] and December of 1990." Do you see that?
[4] A: Yes.
[5] Q: It says, "With respect to the '027
[6] Patent state — that's the next one — the earliest
[7] dates when tests corresponding to the claimed
[8] subject matter were made or conducted." Do you see
[9] that?
[10] A: Yes.
[11] Q: Do you see the answer, "Between February
[12] of 1989 and December 1990?"
[13] A: Yes.
[14] Q: It says, "With respect to the '027
[15] Patent state: Identify all persons having
[16] knowledge of the events set forth in parts (a)
[17] through (c) of this Interrogatory, giving the name
[18] and present address." Do you see that?
[19] A: Yes.
[20] Q: Do you see the response to that, it has
[21] your name?
[22] A: Yes.
[23] Q: That's not true, is it?
[24] A: What?

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[1] Q: That's not accurate? You don't know
[2] whether Prem Singh invented this process in 1989 or
[3] 1990, do you?
[4] A: No, I don't know that, no.
[5] Q: Okay. So the answer to that response as
[6] it applies to you is inaccurate, correct, since it
[7] lists you there?
[8] A: I do not understand this type of
[9] language.
[10] Q: Well, you don't know when Prem Singh
[11] actually reduced to practice the process which is
[12] described in that '027 Patent, Deposition Exhibit
[13] 1, do you?
[14] A: Can you repeat what you just said?
[15] Q: Yes. You don't have any firsthand
[16] knowledge of the earliest date that Prem Singh
[17] actually reduced to practice this process that's
[18] set out in Exhibit 1, do you?
[19] A: I don't, no.
[20] Q: And you don't have any firsthand
[21] knowledge of the earliest dates when tests
[22] corresponding to the process set out in Deposition
[23] Exhibit 1 were made or conducted, do you?
[24] A: He was running all kinds of tests in the

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[1] pilot plant, so whether he is applying for patent,
[2] I would not know. But we were running tests, and I
[3] would be walking the power plant, and there would
[4] be equipment and we'd be running tests.
[5] Q: But you don't know whether those tests
[6] dealt with the process involved in the '027 Patent,
[7] do you?
[8] A: I would not. There is so many food
[9] scientists working at the same time, I would not
[10] know what everybody is doing.
[11] Q: Okay. And you didn't know what Prem
[12] Singh was doing, did you?
[13] A: On what dates?
[14] Q: 1989 to 1990.
[15] A: No, I wouldn't know what Prem is doing.
[16] Q: Who is Pie-Yi Wang?
[17] A: Pie-Yi —
[18] Q: Do you see his name? He's on the next
[19] page. Does he still work for the company?
[20] A: Yes.
[21] Q: And who is he?
[22] A: He is the director of processing, heat
[23] processing.
[24] Q: Do you know whether Mr. Wang was working

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[1] with Prem Singh in 1989 and 1990?
[2] A: He was working with us. Dr. Wang was
[3] working with many of us including Prem Singh.
[4] Q: Okay. Is today the first time you've
[5] seen this Deposition Exhibit 1?
[6] A: That's my recollection —
[7] MR. SCHROEDER: You mean 1 or 2?
[8] BY MR. CASTRO:
[9] Q: I'm sorry, Deposition 2.
[10] A: No, I have not seen this before.
[11] Q: Okay. Were you asked to — did anybody
[12] ask you to gather documents for this lawsuit?
[13] A: Yes.
[14] Q: I assume they asked you to gather
[15] documents regarding the browning and smoking
[16] processes?
[17] A: That's correct.
[18] Q: Okay. Do you know of anyone who has
[19] firsthand knowledge, other than Prem Singh, of Prem
[20] Singh's invention of this process as set forth in
[21] the '027 Patent?
[22] A: No.
[23] Q: Haven't talked to anyone at Conagra who
[24] knows firsthand that Prem Singh invented that

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[1] process?
[2] A: Can you restate that again?
[3] Q: Sure. Have you talked to anyone at
[4] Conagra who has firsthand knowledge that Prem Singh
[5] actually invented the process that's set forth in
[6] Deposition Exhibit 1?
[7] A: No, I have personally not talked to
[8] anybody, no.
[9] Q: Okay. Now, I'm trying to understand
[10] what your role was in '91 to '95 with respect to
[11] such patents. Prem Singh testified that he would
[12] put together — the people, the technicians within
[13] his group, if they came up with new ideas, they
[14] would put together the summary of invention if they
[15] wanted to file a patent on this new idea, and the
[16] summary of invention would include the description
[17] of the process, any prior art that he was aware of
[18] or they were aware of, and other information that
[19] they would compile and then submit to their
[20] lawyers.
[21] Were you ever involved in any of those
[22] summary of invention exercises?
[23] A: I was not.
[24] Q: I am going to hand you what I will mark

[1] if you know?
[2] A: Yes.
[3] Q: In fact, Conagra has used this same
[4] apparatus in order to apply Maillose, correct?
[5] A: In the tests.
[6] Q: In tests?
[7] A: In my tests.
[8] Q: In your tests, you used this same
[9] apparatus to apply Maillose?
[10] A: Correct.
[11] Q: Where would you apply the Maillose as
[12] you look at Exhibit 4?
[13] A: Right here where it says caramelizer.
[14] Q: You just apply Maillose instead?
[15] A: Right.
[16] Q: Would you do that with an atomizer?
[17] A: In here, it has a dip where you dip the
[18] product.
[19] Q: Okay. And that dryer, which is the next
[20] item, was that at temperatures between 460 and 500
[21] degrees?
[22] A: I don't know exact numbers, but there is
[23] a dryer there, yes.
[24] Q: Would you know whether was that between

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[1] as Deposition Exhibit 3 and ask you if you can
[2] identify that document?
[3] A: Looks like the flow diagram for one of
[4] our processes at the Wells, Minnesota plant.
[5] Q: You say it looks like. Is that a
[6] document you've seen before?
[7] A: I have seen this before.
[8] Q: Is that something that you prepared or
[9] someone else prepared?
[10] A: Somebody else prepared it.
[11] Q: Do you know who prepared it?
[12] A: Possibly John Shoop or the plant.
[13] Q: The document at the top has process flow
[14] sheet, do you see that?
[15] A: Yes.
[16] Q: Turkey breast caramelizer, and then it
[17] has a slash browning. Was that added, the browning
[18] part of it? Does that look like that was added to
[19] this flow sheet?
[20] A: I don't think so.
[21] Q: And I ask you that because within this
[22] process flow sheet, has it always — this
[23] apparatus, as identified here on No. 4, has it
[24] always dealt with both caramelizing and browning,

[1] 460 and 500 degrees?
[2] A: Very high temperature, yes, extremely
[3] high.
[4] Q: What type of — did this type of oven
[5] that you have in this in-line — is this an in-line
[6] process, by the way?
[7] A: It is an in-line process.
[8] Q: Okay. And did you actually put this
[9] type of process into commercial use in '89 or '90?
[10] A: Me, myself.
[11] Q: Conagra?
[12] A: It was in our Wells plant.
[13] Q: Was that the Enersyst oven?
[14] A: I don't recall the exact name but could
[15] be.
[16] Q: What type of product was produced at the
[17] Wells plant, if you know?
[18] A: My recollection is slice and serve and
[19] other type of Dupont roast and other products when
[20] I was involved.
[21] Q: Whole muscle meat products?
[22] A: Whole muscle and comminuted, both.
[23] Q: How often would you speak to Prem Singh?
[24] On a daily basis?

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[1] A: Rarely.
[2] Q: Rarely?
[3] A: Because I traveled, he travels.
[4] Q: The product that was produced at that
[5] facility in Wells, were you responsible for that
[6] product between 1989 and 1991?
[7] A: Responsible for what again?
[8] Q: The product that was produced at the
[9] Wells plant.
[10] A: When you say responsible, is that part
[11] of my business responsibility or —
[12] Q: Were you the supervisor? Did you
[13] coordinate which product was run through that
[14] facility?
[15] A: I had no input into that.
[16] Q: So if someone else said that you are
[17] responsible for that product, then that would be
[18] inaccurate?
[19] A: Again it depends on what you mean by
[20] responsible.
[21] Q: Well, how about for testing of product
[22] at the Wells plant, were you responsible for that
[23] between, oh, say 1990 and 1993?
[24] A: Beside me, many other people were

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[1] responsible for testing in the Wells, Minnesota
[2] plant. I'm one of the many who were involved in
[3] that plant.
[4] Q: Tell me the procedure that was in place
[5] in, oh, 1990 when you wanted to run tests on
[6] product in the Wells plant?
[7] A: We would submit a test lot to get the
[8] information on this piece of paper which include
[9] objective, what is the purpose of the test, how
[10] many pounds you're going to produce, and I'm just
[11] going by memory here.
[12] Q: Okay.
[13] A: What would be the disposition of the
[14] product, and the signatures of different people,
[15] meaning the project leader, his boss, the
[16] marketing, so on and so forth.
[17] Q: Well, if you wanted to run a different
[18] type of product, for instance if you wanted to run
[19] Maillose and test Maillose on that product, would
[20] you have to get approval from anyone?
[21] A: If I'm running the test, I get approval
[22] from my boss and others that are being involved in
[23] the test, marketing, sales, so forth.
[24] Q: What about if you want to run tests on

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[1] the product on Maillose in that Wells plant, would
[2] you get the approvals?
[3] A: I'd get the approvals, right.
[4] Q: Would you change the labeling on the
[5] product at the Wells plant if you just wanted to
[6] run test product with Maillose?
[7] A: If it's a test, we are required to have
[8] approval for the test label. That is not going
[9] into production. That's not for sale.
[10] Q: So you wouldn't have to change any
[11] labels?
[12] A: Don't have to change any labels.
[13] Q: How long would those tests last?
[14] A: It depends on what is the objective of
[15] the test.
[16] Q: Let me hand you what I'll mark as — you
[17] wouldn't put UPC codes on it, would you, if you
[18] were just running codes on tests?
[19] A: UPC is not obtained until the product is
[20] ready for commercial.
[21] Q: Until the product is sold commercially,
[22] correct?
[23] A: That's correct.
[24] Q: I hand you, sir, what I'll mark Exhibit

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[1] 4. Can you identify that for me?
[2] A: It's operating instructions of oven
[3] prepared turkey breast.
[4] Q: And the effective date of that order is
[5] when?
[6] A: January 29, 1991.
[7] Q: What's the date below it that says dated
[8] April 1st, '89? What does that mean?
[9] A: You have to ask the document person,
[10] documentation person. I wouldn't know what that
[11] date means.
[12] Q: And it says at this time, the product is
[13] going to be browned with caramel color, is that
[14] correct?
[15] A: Where are you reading that, Counsel?
[16] Q: Look down on C, qualifying statement.
[17] A: Yes, browned with caramel color.
[18] Q: Do you know what oven was used to
[19] produce this product? Was it the Enersyst oven?
[20] A: This being a Wells plant produced
[21] product, this flow chart you gave, this is the one.
[22] When you say Enersyst oven, I'm not recalling exact
[23] oven name.
[24] Q: But you're talking about the in-line

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[1] process in Exhibit 3?
[2] A: Right.
[3] Q: It has here at the top "oven prepared
[4] turkey breast browned with caramel color," right?
[5] A: That is correct.
[6] Q: And the UPC codes that will be affected
[7] are 29048 and 29041, right?
[8] A: Correct.
[9] Q: And the Goldcrest UPC is 29051 and
[10] 29591, correct?
[11] A: That is correct.
[12] Q: So that means that this new process will
[13] affect that product that's going to be shipped out
[14] in commercial use, correct?
[15] A: When you say new process, this could be
[16] an existing process. You're showing me a document
[17] which to me means it's an operating instruction of
[18] these following UPCs. When you say new process,
[19] this may be already in place at this time.
[20] Q: With that reference at the top, this
[21] product is being commercially produced and sold to
[22] the public, correct?
[23] A: That is correct.
[24] Q: Okay. You testified that you weren't

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[1] understand. We have one here dated April 1st, '89,
[2] effective date January 29, 2001 — or, excuse me
[3] '91, and what I'm trying to understand here based
[4] upon this document and your experience with the
[5] company and these operating instructions, is this a
[6] new process that's being implemented here? Can you
[7] tell from this document?
[8] A: From this document, I cannot tell if
[9] it's a new process. It could be an existing
[10] process.
[11] Q: Okay. Simply because these numerous
[12] pages outlining this process are attached doesn't
[13] necessarily mean that it's a new process that's
[14] being implemented?
[15] A: It could be a new process.
[16] Q: But that doesn't —
[17] A: This one doesn't tell you it's a new
[18] process. It is an operating instruction for the
[19] following UPCs.
[20] Q: Right.
[21] A: That's all I can say.
[22] Q: Right. And when this operating
[23] instruction comes out or it's published and it's
[24] approved by people like you, right?

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[1] sure if this was a new process or just an ongoing
[2] continuing process, correct?
[3] A: Counsel, the operating instructions
[4] tells me this is for these following UPCs.
[5] Q: Okay.
[6] A: That's all I can tell. This operating
[7] instruction deals with these following UPCs.
[8] Q: If it was a continuing or ongoing
[9] process, would it typically, in your experience
[10] with the company, have the additional guidelines
[11] and the manufacturing procedures that are attached
[12] to this document? If you look at page 2, for
[13] example, you have manufacturing procedures. It's
[14] quite specific on how it's to be operated.
[15] A: These are steps in the process.
[16] Q: Correct.
[17] A: Okay.
[18] Q: Would that typically be found in an
[19] operating instructions that were just an ongoing
[20] process with the company? Does that make sense?
[21] A: No.
[22] Q: I don't know how many operating
[23] instructions exist with regards to different lines
[24] of product produced by Conagra, so I'm trying to

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[1] A: Yes.
[2] Q: Then the new process takes effect and
[3] affects certain UPC codes, correct?
[4] A: Right.
[5] Q: Okay. And if they affect those UPC
[6] codes and if the product is somehow changed, then
[7] it will tell what product is changed, correct, like
[8] in the UPC codes? Bear with me for a minute. It
[9] will say the UPC codes, right? If there is a
[10] change in how the product is produced, it will give
[11] you the UPC codes, correct?
[12] A: You said to listen. I'm listening.
[13] Q: Okay. Correct, though, it will give the
[14] UPC codes of the product that's being changed,
[15] right?
[16] A: This document, Counsel, is an operating
[17] instruction for the following UPCs.
[18] Q: Right.
[19] A: When you talk about a change —
[20] Q: Okay.
[21] A: Since you probably don't know our
[22] system.
[23] Q: Yes, I want you to tell me.
[24] A: There is a document that goes with it

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[1] which has the changes.
[2] Q: Okay.
[3] A: So if you want to keep continuing on
[4] this document, this is a document of an operating
[5] procedure for the following UPCs.
[6] Q: Okay. And when there is a change that
[7] occurs, which is what you're talking about —
[8] A: A new document is issued.
[9] Q: And it will reference the UPC codes
[10] affected?
[11] A: Right.
[12] Q: And, indeed, those UPCs codes are
[13] product that is manufactured by Conagra, correct?
[14] A: Correct.
[15] Q: That's how you track them, right?
[16] A: Correct.
[17] Q: And that product, based upon its UPC
[18] code reference, is sold out to commercial vendors,
[19] correct?
[20] A: I know these are the products we're
[21] producing. Whether it's sold out and all that, I
[22] don't follow those.
[23] Q: I understand. And if you change the
[24] product —

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[1] A: Or the process.
[2] Q: Or the process and it makes the product
[3] a little bit different, let's say instead of 100
[4] percent fat free, it's 97 percent fat free, let's
[5] use that analogy. Is that fair enough? If you
[6] change the product in that instance, and that's a
[7] hypothetical, would you change the labeling as
[8] well? Would that be noted on the change order?
[9] A: Counsel, label change is done when there
[10] are changes in ingredient.
[11] Q: Okay.
[12] A: Operating instructions are issued when
[13] those changes are made.
[14] Q: And labeling changes occur when the
[15] product has different ingredients, correct?
[16] A: Possible. Many other things.
[17] Q: Okay. But certainly it's changed when
[18] it's going to be sold to the public, right?
[19] A: Uh-huh.
[20] Q: No reason to change it unless it is,
[21] right?
[22] A: I guess not.
[23] Q: Well, I'm asking you. There is no
[24] reason to change the labeling if it's not going to

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[1] be sold to the public, right?
[2] A: Makes sense.
[3] Q: Right. No reason to change the labeling
[4] if it's just testing, right?
[5] A: No reason to change the labeling if it's
[6] testing, right.
[7] Q: Okay. Let me hand you what I'll mark as
[8] No. 5. See if you can identify that document for
[9] me.
[10] A: This is a proposed change, use Maillose.
[11] Q: Okay. The date of that is January 4th,
[12] 1994?
[13] A: Right.
[14] Q: All right. And it's going to be
[15] changed — there is your name on it, to Syed
[16] Hussain, right?
[17] A: Right, that's my request.
[18] Q: Oh, it's your request?
[19] A: This is generated at the request of the
[20] project leader.
[21] Q: Okay. And that would be you?
[22] A: That's correct.
[23] Q: Okay. And it's subject is change
[24] request dated December 30th, 1993, right?

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[1] A: Yes.
[2] Q: For UPCs 45300-29041 and the remainder
[3] of those? I won't read them, correct?
[4] A: Yes.
[5] Q: Do you know what products those are?
[6] A: Those are skinless slight and serve oven
[7] prepared products, not including the mesquite
[8] smoked.
[9] Q: That includes whole muscle products?
[10] A: That includes whole muscle product.
[11] Q: And the change is you're going to use
[12] Maillose, correct?
[13] A: That is correct.
[14] Q: That was approved? I see your name at
[15] the top, documentation change form, requester name,
[16] right, Syed Hussain?
[17] A: Yes, I have signed it, and so have the
[18] plant managers.
[19] Q: Okay. And at number 6, it says change
[20] affects printed product labels. If yes, current
[21] label inventories, and it says choose option A, B
[22] or C by marking with an X. And it has, under A,
[23] make change rapidly, get temporary label approvals,
[24] and that's marked with an X, correct?

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[1] A: Right.
[2] Q: So you're going to sell that product to
[3] the public, correct?
[4] A: With a temporary approval.
[5] Q: Okay. And let me hand you what I'll
[6] mark as 6. Can you identify that document? That's
[7] No. 6, is that correct?
[8] A: Yes.
[9] Q: Can you identify that for us, sir?
[10] A: It's a Maillose pH and concentration
[11] check sheet that was generated on the test date and
[12] subsequent test dates.
[13] Q: For days thereafter, January 3rd through
[14] January 13, correct?
[15] A: Correct.
[16] Q: Products being produced with the
[17] Maillose, correct?
[18] A: Correct.
[19] Q: With that system at the Wells plant,
[20] correct?
[21] A: Correct.
[22] Q: And that product with the UPC codes is
[23] being sold to the public, correct?
[24] A: I don't know if that was sold to the

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[1] Q: That's correct.
[2] A: The company. I am just one part of the
[3] company, sir.
[4] Q: That's correct.
[5] A: Right. This was the product I produced,
[6] showed it to marketing. If they say yeah, make the
[7] change, we generate this document. Once I generate
[8] this document, my job is done.
[9] Q: What are these documents, these two
[10] pages reflect on No. 6? Do they show that quite a
[11] bit of that product was produced?
[12] A: From here, you cannot tell how much
[13] product is produced. All you can say is that there
[14] is data on pH for the Maillose pH and concentration
[15] check. That's all it tells me that they are
[16] checking for pHs of this Maillose solution.
[17] Q: Okay. Are there other documents that
[18] you have that would show — that you keep, if you
[19] know, that would show product that's produced back
[20] that far?
[21] A: At the plant level, maybe. I don't
[22] know.
[23] Q: You don't know?
[24] A: Because at the plant level, I'm not

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[1] public.
[2] Q: Well, you had labeling?
[3] A: This is a label request.
[4] Q: Okay.
[5] A: This is a request.
[6] Q: Correct. And you only have a label
[7] request if you're going to sell it to the public,
[8] correct?
[9] A: But then there is other people that get
[10] involved from marketing and sales who decide
[11] whether the product goes in the market and all
[12] that, so I am not involved in that process. My job
[13] stops here.
[14] Q: But it's produced for commercial use,
[15] correct, with the labeling change?
[16] A: If it is going for production.
[17] Q: Yes.
[18] A: My job stops here when I've done the
[19] testing and I said go ahead and make the change and
[20] ask others to approve it, I'm done with it.
[21] Q: Okay. You intended to produce that
[22] product on a commercial basis. That's why you
[23] asked for the temporary label change, correct?
[24] A: Just me?

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[1] involved.
[2] Q: Okay. So you started — am I right in
[3] assuming that with Deposition Exhibit 5, you
[4] started producing product made with Maillose,
[5] right? Does that indicate when you started
[6] producing that product?
[7] A: This just indicates — this is the day
[8] a request was submitted for the change in the
[9] label.
[10] Q: Okay. I hand you what I'll mark as
[11] No. 7. Can you identify that document?
[12] A: This is another change request form.
[13] Q: That's from you?
[14] A: That is from me.
[15] Q: And what does that say under item number
[16] 1?
[17] A: You want me to read it to you?
[18] Q: Yes, please.
[19] A: "Stop using Maillose, an aqueous
[20] solution of caramel coloring with a low pH. 2.5 to
[21] 3.5. Go back to using the caramel solution."
[22] Q: What's the next, products affected by
[23] name are skinless slice and serve oven prepared
[24] caramel, right?

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[1] A: Correct.
[2] Q: Why did you stop using Maillose?
[3] A: As I recall, the Maillose when we were
[4] heating in this caramel dip was emitting some kind
[5] of gas that was objectionable to the people on the
[6] line. That's my recollection.
[7] Q: Were you achieving a golden brown color
[8] with that Maillose?
[9] A: We were achieving a golden brown color.
[10] Q: It was just a matter of the people on
[11] the line —
[12] A: Were complaining that it had an odor.
[13] Q: Okay. And, in fact, the next one, item
[14] 3, says products affected by UPC and it lists
[15] those. Are those UPC codes consistent with the
[16] skinless slice and serve oven prepared caramel?
[17] A: Counsel, you're holding it. I'm not
[18] seeing it. You said another document.
[19] Q: The same one, Exhibit 7, right there.
[20] Take a look at that. I apologize.
[21] A: No problem.
[22] Q: Look at number 3?
[23] A: Number 3.
[24] Q: What are those UPC codes, what do those

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[1] products represent? Because it appears that
[2] according to this document they're affected by this
[3] cease the Maillose.
[4] A: Which is Exhibit 5 listing here.
[5] Q: Okay. Do you know as you sit here today
[6] what those products are by those UPC code numbers?
[7] A: I mean I see they are skinless slice and
[8] serve oven prepared products, not the mesquite
[9] smoke. That's all I can — with UPC, I cannot tell
[10] every product. There are thousands and thousands
[11] of UPCs.
[12] Q: Now, that's January. Do you know
[13] whether you stopped using Maillose at the Wells
[14] plant on January 26th?
[15] A: This document is generated January 26th
[16] to stop using Maillose.
[17] Q: But it's just a recommendation by you?
[18] A: My recommendation was followed because
[19] it was the matter of public people working in the
[20] plant complaining.
[21] Q: Okay. So you know for a fact that the
[22] product was produced with Maillose?
[23] A: Yes.
[24] Q: Okay. No. 7 there, Mr. Hussain.

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[1] A: 6 here?
[2] Q: That's 7, we're talking about the
[3] product produced by the Maillose. How much product
[4] was being produced per day?
[5] A: I would not know that.
[6] Q: How many pounds?
[7] A: I would not know the poundage.
[8] Q: Okay. And do you know what the hardware
[9] was there in 1994, what was producing this product?
[10] Was it this flow chart? Was it that hardware, flow
[11] chart in Exhibit 3?
[12] A: Correct.
[13] Q: Okay. Do you know what oven it was?
[14] A: Again, like I said, I don't recall exact
[15] oven, no.
[16] Q: But it was a linear —
[17] A: It was a linear.
[18] Q: Okay. No. 8 here, can you identify
[19] that?
[20] A: Okay. It's dated February 11, 1994.
[21] I'm the requester. The change is stop using
[22] Maillose, an aqueous solution of caramel coloring
[23] with a low pH of 2.5 to 3.5 and go back to using
[24] the caramel solution.

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[1] Q: So even as of February 11th, you still
[2] had not stopped using Maillose, correct?
[3] A: If you look at the effective date, it
[4] says 1-26-94 in the middle of that document. You
[5] see that date?
[6] Q: Yes, I do.
[7] A: The February 11th document could be a
[8] repeat or reminding the people that our request has
[9] not been approved to a document change. You see
[10] "the above referenced document has not been
[11] approved through a document change form." It is an
[12] internal memo reminding people as I recall, you
[13] know.
[14] Q: Was permission ever given to stop using
[15] the Maillose?
[16] A: Pardon me?
[17] Q: Was permission ever given to stop using
[18] Maillose at the Wells plant?
[19] A: This request form says that, stop using
[20] Maillose.
[21] Q: Exhibit 7?
[22] A: Exhibit 7. It says stop using Maillose.
[23] Q: Does that mean that Maillose was stopped
[24] being used?

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[1] A: When this goes on that day, it should be
[2] that they should stop using Maillose on that day.
[3] Q: But they may not?
[4] A: Again it's a hypothetical thing, may or
[5] may not. I am just saying this is what it means
[6] that it is telling them to stop using Maillose.
[7] Q: Okay. Well, I just wondered because in
[8] the next Exhibit I handed you, at the bottom, if
[9] you look at that, it says "the above referenced
[10] request has not been approved through a
[11] documentation change form."
[12] A: Yes, meaning that somewhere in the
[13] system, that they need to remind the people that
[14] this form has not been, you know, circulated or has
[15] not been approved.
[16] Q: Well, above that, doesn't it say
[17] "unapproved change?" Doesn't that tell you that it
[18] actually had not changed as of February 11th, 1994?
[19] A: Possible.
[20] Q: In fact, it's probable if that's what
[21] that document says, isn't it?
[22] MR. SCHROEDER: Objection, calls for
[23] speculation.
[24] BY MR. CASTRO:

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[1] Q: You can answer.
[2] A: As I said, the effective date I put on
[3] that is 1-26-94. This document is generated by
[4] another department that generates those documents.
[5] And, like I said, I don't know why this document
[6] says unapproved change. I have no clue what that
[7] means.
[8] Q: Well, what does it mean to you?
[9] A: What it means is this document, which is
[10] Exhibit 7, says stop using Maillose. And there is
[11] a follow-up document that says that this request
[12] has not been approved through a document change.
[13] Must be some procedure in the document that has not
[14] been followed. That's all it tells me.
[15] Q: And it's possible that the product was
[16] still being produced by Maillose, correct?
[17] MR. SCHROEDER: Objection, calls for
[18] speculation.
[19] BY MR. CASTRO:
[20] Q: You can answer. Based upon these
[21] documents in front of you, Exhibit 7 and 8, it's
[22] still possible that as of February 11th of 1994,
[23] the product as described in those UPC codes were
[24] still being manufactured using Maillose, correct?

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[1] MR. SCHROEDER: Objection, calls for
[2] speculation.
[3] BY THE WITNESS:
[4] A: I'm following — what does it mean when
[5] he objects?
[6] MR. SCHROEDER: Go ahead and answer.
[7] BY MR. CASTRO:
[8] Q: Go ahead and answer.
[9] A: It's possible, yes.
[10] Q: Who is Stan Gershenson?
[11] A: Stan Gershenson is the director of
[12] product development for food service.
[13] Q: What's his responsibility, do you know?
[14] A: Director of product development for food
[15] service.
[16] Q: Well, is he the person who is
[17] responsible for the products that are produced by
[18] the processes you invent, how's that?
[19] A: He directs a team of people in the food
[20] service product development.
[21] Q: Let me hand you what I'll mark as No. 9,
[22] ask you if you can identify that document, sir?
[23] That document is a letter dated April 29th of 1994
[24] to Stanley Gershenson from Jim Hutchison. Have you

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[1] seen that document before?
[2] A: It is addressed to Stan. I have no
[3] recollection of seeing this particular document.
[4] Q: Typically in your field, would you get a
[5] copy of a document like that if Stan wanted you to
[6] look at an idea that someone was trying to sell to
[7] the company?
[8] MR. SCHROEDER: Objection, calls for
[9] speculation.
[10] BY MR. CASTRO:
[11] Q: You can answer.
[12] A: If he had shown it, it's not coming
[13] right now that I've seen it.
[14] Q: Okay. Do you know who Jim Hutchison is?
[15] A: Jim Hutchison was one of the guys that
[16] used to call from this company, Unitherm.
[17] Q: Okay.
[18] A: On me. He used to call on our company.
[19] Q: Was he well respected?
[20] A: I didn't ask anybody about that, but to
[21] me, he was a nice man.
[22] Q: Okay. Now, from '91 to '95, you were in
[23] this office at Elk Grove, right? You were in an
[24] office, that cubicle?

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[1] A: In Elk Grove?
[2] Q: Downers Grove, I'm sorry. You were in
[3] this office building, right, with the cubicles?
[4] A: Right.
[5] Q: Like we sit here today except there were
[6] cubicles that separated your office from other
[7] technicians, right?
[8] A: Food scientists.
[9] Q: And that was from '91 to '95?
[10] A: Correct.
[11] Q: And then you moved to the executive
[12] towers, right?
[13] A: I moved to an office, then to the
[14] towers.
[15] Q: But from '91 to '95, you were in an
[16] office area within 10 to 20 feet of Prem Singh,
[17] correct?
[18] A: I did not say that. You said it.
[19] Q: Do you agree with that?
[20] A: It is within that — the general area.
[21] 10, 12, 15, I don't know how many.
[22] Q: Okay. I want you to read, if you would
[23] sir, read with me the second paragraph of that
[24] Exhibit.

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[1] A: Exhibit No. 9?
[2] Q: Exhibit 9.
[3] A: "Where we stand now is an oven browning
[4] time of about seven minutes using Maillose. Yield
[5] is 96 percent higher on all tests and products are
[6] considered excellent. Not a salesman's term, Stan;
[7] your folks said it." Your folks said it.
[8] Q: Now, you were given a demonstration of
[9] an oven and a method for browning whole muscle meat
[10] products by Unitherm, weren't you, before this
[11] letter went out?
[12] A: I got to see the letter that you're
[13] saying that I — I was in Unitherm for 15, 20, half
[14] an hour max.
[15] Q: You were there with John Shoop, weren't
[16] you?
[17] A: Yes. John went there before. I took
[18] the product and joined him.
[19] Q: Did John Shoop tell you that he had an
[20] idea in an oven process that he wanted to show you?
[21] A: I was just running a test at that
[22] facility using their oven.
[23] Q: My question is, though, did Mr. Shoop
[24] tell you "I want you to look at this process as put

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[1] out by Unitherm. I want you to bring some whole
[2] muscle meat products, and I want you to brown it in
[3] this process?" Didn't Mr. Shoop tell you that?
[4] A: I was working with Mr. Shoop on a
[5] project, on several projects, and he said there is
[6] an oven that you can test.
[7] Q: And when you saw the results of what
[8] that oven could do, didn't you tell them that's
[9] excellent?
[10] A: Told John Shoop it is excellent?
[11] Q: That's correct.
[12] A: I don't recall that excellent word with
[13] John.
[14] Q: How about good?
[15] A: There were issues, but as a common
[16] courtesy, I said good test.
[17] Q: So as a common courtesy, you said it was
[18] a good test?
[19] A: Yes.
[20] Q: Were you excited about the results of
[21] that testing?
[22] A: I don't know if you call it excitement.
[23] I'm just saying that I said to John "very good
[24] test."

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[1] Q: So if someone else testifies that you
[2] were excited and that you said it was excellent
[3] results, then they would be lying?
[4] A: No, I wouldn't say that. Their
[5] interpretation of me saying good may be excellent,
[6] so be it.
[7] Q: Did you tell Jim Hutchison that the
[8] product that was produced was excellent?
[9] A: Is it in a written memo?
[10] Q: No. I am just asking you if you recall
[11] telling Jim Hutchison. He states it in this letter
[12] here that someone has told him that the product
[13] that was tested that the results were excellent.
[14] Do you see that in that second paragraph? Yeah,
[15] where we stand now is an oven browning time of
[16] about seven minutes using Maillose, right?
[17] A: Uh-huh.
[18] Q: Yield is 96 percent or higher on all
[19] tests, right, and product was considered excellent?
[20] A: These are all statements of Jim
[21] Hutchison.
[22] Q: That's correct. And I am asking if you
[23] told Jim Hutchison that the product produced was
[24] excellent?

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[1] A: If the yields were 96 percent, I need to
[2] see the proof, number one. Number two, saying
[3] excellent is just a courtesy saying that it's good,
[4] very good job, excellent. To me they're all
[5] saying — you're complimenting somebody because you
[6] went and used their oven. That's all it means.
[7] Q: Was anyone else at these tests that were
[8] run on the Unitherm apparatus?
[9] A: I went to Unitherm once, was there for
[10] half an hour max, as I recall. I was the only one
[11] from the company.
[12] Q: Why did you go?
[13] A: To run the test.
[14] Q: Any other reason?
[15] A: No other reason. John Shoop said here
[16] is equipment, come and try it.
[17] Q: Did the tests that were run, are they
[18] consistent with this statement made by Jim
[19] Hutchison in this paragraph?
[20] A: They are not.
[21] Q: What's inconsistent about it?
[22] A: The yield.
[23] Q: The yield wasn't 96 percent?
[24] A: Never.

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[1] Q: Why do you say never? Did you run other
[2] tests?
[3] A: Well, that number — 96 is a pretty good
[4] yield, and if I had seen that yield, I would recall
[5] that. I don't recall getting that high yield in
[6] the test we ran at Unitherm.
[7] Q: You just don't recall?
[8] A: And I don't think we got that yield.
[9] Q: But you could have?
[10] A: No.
[11] Q: Well, do you know for a fact as you sit
[12] here today —
[13] A: Yesterday when I was reviewing the
[14] document, I saw the yields there and it came back,
[15] yes, that was not 96 percent.
[16] Q: So you have some test results that you
[17] looked at yesterday, is that right?
[18] A: That's correct.
[19] Q: And when were those test results? What
[20] are the date of those, do you recall?
[21] A: I don't recall the dates.
[22] Q: Were they before 1994?
[23] A: Again I have to see the document. I
[24] don't recall.

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[1] Q: Well, were they in 1993, do you recall?
[2] A: As I said, I don't recall.
[3] Q: What are the numbers you saw yesterday
[4] when you were looking through your file?
[5] A: I believe it was like in the 76 percent
[6] range.
[7] Q: I am going to hand you what I've marked
[8] as Exhibit 10. Can you identify that?
[9] A: This is the document I looked at
[10] yesterday. That's the number that said 76 percent
[11] in one variable and 70.8 some number in the second
[12] variable.
[13] Q: And those are two raw breasts, correct,
[14] over on the left?
[15] A: Correct.
[16] Q: So those aren't cooked breasts, correct?
[17] A: That's what is marked, yes. This is not
[18] my writing, but that's what it says.
[19] Q: With the cooked breast, it doesn't have
[20] the yield percentage, does it?
[21] A: Correct.
[22] Q: But it does say that they showed you a
[23] Maillose spray between the second and third zone,
[24] correct?

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[1] MR. SCHROEDER: Objection, misleading. Go
[2] ahead.
[3] BY THE WITNESS:
[4] A: This is a document that was generated
[5] not in my presence and not addressed to me, and so
[6] I don't know. Anybody can write anything on it.
[7] BY MR. CASTRO:
[8] Q: Well, do you disagree with it?
[9] A: Disagree with what part?
[10] Q: With the contents of this document. Do
[11] you disagree with what it says?
[12] A: It's data.
[13] Q: It's a document that has product,
[14] turkey, uncooked turkey breast, correct?
[15] A: Right, not a problem.
[16] Q: Supplied by Armour?
[17] A: Correct.
[18] Q: Was that product supplied by you?
[19] A: Correct.
[20] Q: And that was on September 30th, 1993?
[21] A: Correct.
[22] Q: Do you agree with that date?
[23] A: That is correct.
[24] Q: Do you agree that you had what appear to

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[1] be one raw breast, a second is a raw breast, and
[2] the third is a cooked breast? Do you agree with
[3] those?
[4] A: Exactly.
[5] Q: Do you agree with everything contained
[6] in the first column?
[7] A: Correct.
[8] Q: How about the second column where it
[9] says cook time? You have 90 minutes, 90 minutes,
[10] right? Is that what that says?
[11] A: Where?
[12] Q: Does that say 90?
[13] A: Okay, 90 minutes.
[14] Q: So you were there for at least an hour
[15] and a half, right?
[16] A: I was not there for the entire cook.
[17] Q: How did that happen?
[18] A: Well, as I said —
[19] Q: Is that the old My Cousin Vinnie, does
[20] it cook faster —
[21] A: These data were generated — if it was
[22] my writing, I could say yes, this is my handwriting
[23] and this is my data. This data was generated by
[24] somebody.

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[1] Q: Right.
[2] A: And it could have been generated
[3] afterwards.
[4] Q: Well, did they cook it in front of you?
[5] A: They put the product in front of me.
[6] Q: Right.
[7] A: The clearance, as I remember, was so
[8] small, the product got stuck also, okay. So if it
[9] was finished in 90 minutes, I was only there — as
[10] I recall, my recollection is 30 minutes, 40
[11] minutes. That's all I was there.
[12] Q: But if someone else recalls you were
[13] there longer, you wouldn't have any reason to
[14] disagree with them, would you?
[15] A: If they have a better memory than me,
[16] yes.
[17] Q: Who else was there other than John Shoop
[18] and you? Was David Howard there?
[19] A: My recollection I don't recall him being
[20] there.
[21] Q: Was Prem Singh there?
[22] A: No.
[23] Q: Did you tell Prem Singh you were going
[24] to run some tests on this whole muscle meat?

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[1] A: No.
[2] Q: Did you ever tell him you ran these
[3] tests with this product?
[4] A: Prior to this test, no.
[5] Q: No, no. The September 30, did you tell
[6] him about this test?
[7] A: No.
[8] Q: You never did?
[9] A: No, not that I recall.
[10] Q: Now, what about this cook time, seven
[11] minutes, do you agree with that on the cooked
[12] breast?
[13] A: It's the data. It says that cook time
[14] was seven minutes.
[15] Q: Do you agree with that? Can you recall
[16] as you sit here today that you remember watching
[17] that pre-cooked breast go through in seven minutes?
[18] A: Yes, I recall that.
[19] Q: Okay. So that's accurate, right?
[20] A: Right.
[21] Q: And temperatures, Zone 1, 330, is that
[22] accurate?
[23] A: I personally didn't go and see all the
[24] temperatures on the zone, so to recall that, it's

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[1] very hard to remember that far.
[2] Q: You don't have anything that
[3] disagrees —
[4] A: This is data. I never dispute data
[5] because data is data.
[6] Q: You don't have anything that disputes
[7] the temperatures in Zone 1, Zone 2 or Zone 3,
[8] right?
[9] A: Those are the settings.
[10] Q: Okay. And here in this column over in
[11] the right where it says cooked breast, do you see
[12] that? It says "color only, excellent?"
[13] A: That is correct.
[14] Q: Now, is that your writing or someone
[15] else's?
[16] A: No, it is not my writing.
[17] Q: Okay. And it's your testimony under
[18] oath today in front of the judge and jury that you
[19] were not surprised by these results?
[20] A: Results of color or the yields?
[21] Q: The color.
[22] A: My recollection it was a good color, and
[23] if I used the term excellent to explain it to
[24] somebody, those are the words I used, good,

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[1] excellent. To me those are a compliment.
[2] Q: What did you do after these tests
[3] results came out?
[4] A: These were essentially for my own
[5] evaluations and follow-up.
[6] Q: What were you evaluating at that time?
[7] Were you having a problem with your product?
[8] A: As a scientist, I look at various
[9] variables and various ways of doing things.
[10] Q: As a scientist with Conagra, you
[11] oftentimes will go out to vendors and others and
[12] try to look at what they've got going on, right?
[13] A: As a scientist, I go to vendors to test
[14] their equipment.
[15] Q: And you were pleased with these test
[16] results, correct?
[17] A: With this one?
[18] Q: Yes.
[19] A: If it says excellent, it means that I
[20] was pleased with it.
[21] Q: I am asking you now were you pleased
[22] with those results?
[23] A: My recollection is yes.
[24] Q: In fact, weren't you so pleased that you

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[1] A: Using Maillose for browning the
[2] products.
[3] Q: In batch houses or in in-line process?
[4] A: Both, slice and serve as an example is
[5] an in-line.
[6] Q: Right. What's the date of that quote?
[7] A: October 6th, 1993.
[8] Q: Do you recall receiving that quote?
[9] A: It is addressed to me. It is for me.
[10] Q: My question is do you recall receiving
[11] that quote?
[12] A: Yes, I do recall receiving that quote.
[13] Q: Do you throw those quotes away if you
[14] don't act on them? Because this document wasn't
[15] produced by Conagra, so I'm just wondering what do
[16] you do typically with the quote?
[17] A: Either I file it away or keep it for if
[18] it comes back again, that, hey, did I look at that
[19] even.
[20] Q: Do you throw them away?
[21] A: Sometimes I throw them away.
[22] Q: Did you throw this one away, or do you
[23] recall?
[24] A: I think we kept this. Was this part of

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[1] asked for a quote from Mr. Hutchison?
[2] A: If it's in writing, then I can verify
[3] it. If I asked him in verbal, I don't recall.
[4] Q: I hand you what we will mark as your
[5] Exhibit 11. Is that a quote you requested from
[6] Mr. Hutchison?
[7] A: Salesmen do give quotes without even a
[8] request, Counsel.
[9] Q: I understand that, but that's not my
[10] question.
[11] A: It's a quote.
[12] Q: My question is did you ask for that
[13] proposal?
[14] A: I don't recall this.
[15] Q: So you could have?
[16] A: I may have, may not have.
[17] Q: Did you share this proposal with Prem
[18] Singh?
[19] A: I don't recall. No, I did not share
[20] that with Prem Singh.
[21] Q: Why not?
[22] A: Because it was my project. I was
[23] working on it.
[24] Q: And what was your project?

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[1] my documents? I don't recall.
[2] Q: I've never seen it produced from your
[3] set of documents.
[4] A: Well, like I said, sometimes I keep the
[5] records. Sometimes if it's not going to be useful
[6] to us, I throw it away.
[7] Q: Isn't this an offer to sell you a
[8] system?
[9] A: Is there an offer here? It's just
[10] telling me the specification.
[11] Q: Well, you said they're always sending
[12] you proposals, right, vendors are?
[13] A: Vendors are, yes.
[14] Q: Is he trying to sell you this oven?
[15] A: The title of this document is "Budgetary
[16] Proposal RapidFlow Oven" prepared for me.
[17] Q: All right. Look at the second page.
[18] A: Okay.
[19] Q: Is he trying to sell you this RapidFlow
[20] II oven for a price of \$498,000?
[21] A: He is quoting a price.
[22] Q: Was he just giving you that price
[23] because —
[24] A: Salesmen do that, Counsel. Very often

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[1] they give me quotes.
[2] Q: They want to sell you the product,
[3] right?
[4] A: They all want to sell something.
[5] Q: Right. What about the next page? He is
[6] wanting to sell you this atomizer, right? The next
[7] page after that. Look on the top, it says
[8] atomizer?
[9] A: Yes.
[10] Q: It says placed between zones one and two
[11] to facilitate spray application of liquid browning
[12] and/or smoke flavor agent, right? He wanted to
[13] sell you that, didn't he?
[14] A: These are all the things that he listed
[15] that he's trying to sell.
[16] Q: Right. Now, go to the next page.
[17] What's he trying to sell you, something that will
[18] brown your meat, your whole muscle meat product?
[19] A: He's trying to sell a system that cooks
[20] and gives a brown color, whatever.
[21] Q: Right. He's trying to sell you a system
[22] that will produce a golden brown product, correct?
[23] A: From this proposal, all he is submitting
[24] is a proposal.

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[1] Q: Right. And he's wanting to sell you the
[2] process?
[3] A: They all want to sell something.
[4] Q: I understand. My questions are very
[5] simple. He just wants to sell you a process that
[6] will produce a golden brown product, correct?
[7] A: That's your words.
[8] Q: I am asking you if you agree with those
[9] words?
[10] A: No, I do not agree with those words.
[11] This is a proposal submitted for my consideration
[12] for this equipment.
[13] Q: Right.
[14] A: That's all it means to me, simple
[15] proposal.
[16] Q: Equipment to produce what?
[17] A: A smoked product, a color smooth
[18] product.
[19] Q: Not necessarily smoked. Browned?
[20] A: Browned.
[21] Q: Using Maillose, correct?
[22] A: Where does it say Maillose? I don't
[23] know.
[24] Q: Well, let's go to the next page.

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[1] Capacities, see the next page?
[2] A: Counsel, let me tell you. I don't
[3] necessarily go through everything because there is
[4] a gentleman who handles these things. His name is
[5] Mike McDonough and others. I may have just passed
[6] this on to Mike, you study this.
[7] Q: Fair enough.
[8] A: Fair enough.
[9] Q: Capacities will be based on test
[10] parameters at Elk Grove Village on 9-30-93 as
[11] witnessed by Dr. Hussain and J. Hutchison. Do you
[12] see that?
[13] A: Yes.
[14] Q: It says "Sweetheart Turkey Breast,"
[15] right, five pieces per linear foot, do you see
[16] that?
[17] A: Yes.
[18] Q: Do you agree with that?
[19] A: When you say agree with that, he's
[20] documenting something he has written, and I am just
[21] reading what he has written.
[22] Q: Do you agree that you saw — you ran
[23] five pieces of Sweetheart turkey breast through a
[24] 40 inch belt width, right?

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[1] A: My recollection is I took pieces of
[2] turkey breast. Whether it was five, ten, I don't
[3] recall that.
[4] Q: Okay. And you had process time of 10
[5] minutes, right, undipped, no solution, do you agree
[6] with that?
[7] A: And he's converting that into so many
[8] pieces per hour.
[9] Q: That's right.
[10] A: Based on a very limited number of data
[11] points.
[12] Q: Right. Do you agree with that?
[13] A: It's a document, yes.
[14] Q: Do you agree with that process time?
[15] A: That's what he's stating.
[16] Q: All right. Do you agree with it based
[17] upon your witnessing the tests that were done on
[18] September 30th, 1993?
[19] A: That this is what he's making the
[20] statement, yes.
[21] Q: Yes. And you agree that what you
[22] witnessed is set forth —
[23] A: I only witnessed the pieces that I took,
[24] Counsel. When he is stating 1,020 pieces per

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[1] hour —
[2] Q: I understand that. When he converts it,
[3] you can't give an opinion as to that, right?
[4] A: That's right.
[5] Q: What about process time, seven and a
[6] half minutes dipped, do you agree with that
[7] statement?
[8] A: That's what he says. Must be correct.
[9] Q: Do you agree with that statement?
[10] A: Yes.
[11] Q: What did you do when you got that
[12] proposal?
[13] A: As I said, one of two things could have
[14] happened. One, I must have given it to Mike
[15] McDonough to do the follow-up, or if I want to
[16] think about it later, it goes in a file or it's
[17] thrown away.
[18] Q: Mike McDonough?
[19] A: Mike McDonough.
[20] Q: How do you spell that?
[21] A: M-c-D-o-n-o-u-g-h, Mike McDonough.
[22] Q: Okay. Did you run some more tests on
[23] product with Unitherm and Red Arrow — Strike that.
[24] Did you run more tests with Unitherm on

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[1] facility and saw the testing, right?
[2] A: At the request of Jim Shoop, I went to
[3] their facility to run the test.
[4] Q: John Shoop, you mean?
[5] A: John Shoop, yes.
[6] Q: And Prem — is it your testimony today
[7] that Prem was not involved?
[8] A: I'm not Prem. You said Prem.
[9] Q: I'm sorry. Is it your testimony today
[10] that Prem Singh was not involved in the testing of
[11] that product?
[12] A: Not with me at Unitherm.
[13] Q: I hand you what I've marked as No. 12.
[14] Can you identify that document?
[15] A: It's a thank you note from me to David
[16] and Amanda.
[17] Q: Could you read that for us out loud?
[18] A: "I really enjoyed visiting Unitherm
[19] facility yesterday. It was a very good learning
[20] experience for me."
[21] Q: Stop there. What did you learn at the
[22] facility?
[23] MR. SCHROEDER: Objection, lacks foundation.
[24] BY THE WITNESS:

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[1] whole muscle meat products?
[2] A: Restate that question again.
[3] Q: Yes. Did you run more tests on whole
[4] muscle meat product that you provided to Unitherm?
[5] That was a terribly worded question,
[6] too.
[7] Did you run some additional tests with
[8] Unitherm on whole muscle meat product you provided
[9] to that company?
[10] A: No, I did not.
[11] Q: Do you know if anyone else from Armour
[12] Swift did?
[13] A: Not that I know.
[14] Q: So you would have — did you testify you
[15] would have given this proposal to Mike McDonough?
[16] A: Possible.
[17] Q: And he was your boss, or he is the one
[18] that made the decisions on buying product?
[19] A: Mike is not my boss, and Mike works in
[20] the purchasing department.
[21] Q: Okay. He is the one that would buy the
[22] process you witnessed at the Unitherm facility?
[23] A: He's in charge of purchasing.
[24] Q: And to make it clear, you went to their

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[1] A: You know, it's just a statement. It's
[2] just being nice. To me, it was a good learning
[3] experience for me. Today coming in here giving a
[4] deposition is an experience. I have never done
[5] that before. So these are just experiences,
[6] Counsel. It's just saying nice thing to somebody.
[7] I came to your facility, I'm just thanking you, it
[8] was a good experience.
[9] BY MR. CASTRO:
[10] Q: Read the next sentence.
[11] A: "The tests we ran were very good."
[12] Q: Was that just being nice, too?
[13] A: That's also being nice.
[14] Q: Was that truthful? Do you lie to be
[15] nice?
[16] A: No, no. If it is good, you say good.
[17] Even if it's half good also, I'll say good because
[18] I'm a complimentary person.
[19] Q: And if it's half as good, you still say
[20] it was very good, is that your testimony?
[21] A: Yes, I would say very good. Because, as
[22] I recall, I told you I recall when the product was
[23] going through the oven, it got stuck. And I said
[24] to myself, "oh, the clearance is a problem here."

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[1] So would I tell them? No. I'm in their facility.
[2] I want to be nice to them. I would never complain
[3] to them.
[4] Q: Let me read this for you. "I will be
[5] presenting the test products to our management this
[6] afternoon." Now, did you lie about that, too?
[7] A: No.
[8] Q: Or were you just being honest?
[9] A: Just being honest. When you say to our
[10] management, that's our internal people that I would
[11] present a product. Yes, when you go on a mission
[12] and you've done a test, you show the product to
[13] management, good or bad.
[14] Q: What about the next sentence, "We will
[15] have to conduct a few more tests after the AMI?"
[16] Just being nice?
[17] A: Just being nice.
[18] Q: Did you intend to conduct more tests?
[19] A: Oh, yes, possible. You know, in a
[20] scenario, various variables I'm going to look at, I
[21] may come back to it.
[22] Q: You may?
[23] A: Yes.
[24] Q: And again you're being nice, "Again

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[1] thanks for your very kind help. See you soon.
[2] Sincerely, Syed?"
[3] A: These are all being very nice, and if
[4] that's — that's the way I am.
[5] Q: Do you think it's nice to lead someone
[6] on?
[7] A: This is not leading anybody in my
[8] judgement, no. They were kind. They let us in the
[9] facility. It's just reciprocating them saying
[10] thank you.
[11] Q: I will mark No. 13, again a document
[12] that we had, but you didn't produce. Have you seen
[13] that document before, Mr. Hussain?
[14] A: I have seen this document. That was
[15] also sent by, I recall, Jim Hutchison.
[16] Q: Right, to Mike McDonough. Is that the
[17] guy you were talking about earlier?
[18] A: Right.
[19] Q: You've seen that before today?
[20] A: Correct.
[21] Q: Did you keep this, or did you throw it
[22] away?
[23] A: As I recall, you know, I don't have it
[24] in my file particularly, but it could have been in

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[1] anybody else's file including Mike McDonough.
[2] Q: Now, it says here, "As you probably
[3] know, we've been working closely with Dr. Hussain
[4] on turkey breast browning at our Elk Grove facility
[5] for the past month." Is that true or false?
[6] A: See, for the past month. I go there
[7] once for half an hour, it becomes for the last past
[8] month. See, that's another salesman talk that is
[9] saying, "oh, for the last month, I've been working
[10] with him at that facility."
[11] Q: Okay. So that's just one time, right,
[12] is that your testimony today?
[13] A: That's my recollection.
[14] Q: Okay. "Syed will tell you the results
[15] have been excellent." Is that just a salesman's
[16] term, or are you just being nice again?
[17] A: No. He can say excellent because I used
[18] the term excellent at his facility or good at his
[19] facility. He is free to use the word. I am not
[20] going to stop him from using any word.
[21] Q: Now, it says here, "some of the data is
[22] included on page 2, and the first issue of this
[23] bulletin, which we wrote to Dr. Hussain with a copy
[24] to you and Prem, describes earlier results."

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[1] So here Mr. Hutchison says that Prem was
[2] sent a copy of the test results, doesn't it?
[3] A: This is all Jim Hutchison doing that.
[4] Q: Did you talk to Prem about those
[5] results?
[6] A: No, I did not, not that I recall.
[7] Q: You could have, but you just don't
[8] recall as you sit here today?
[9] A: No, I don't recall talking to Prem about
[10] this.
[11] Q: So the one time that you tested product
[12] or sent — how about this? You only sent product
[13] once to the Unitherm facility to test?
[14] A: I went there with the product once as I
[15] recall to test.
[16] Q: And you never sent any other product to
[17] be tested?
[18] A: Not that I recall.
[19] Q: Okay.
[20] A: Because he's talking about whole birds
[21] and numbers in here on this page 2 of this
[22] bulletin.
[23] Q: Yes.
[24] A: I'm wondering where — I have never sent

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[1] him 1,224 whole birds and 864 whole birds and 668
[2] whole birds. This was never sent to them. And
[3] 2,098 poultry parts, these were never sent.
[4] Q: How about in the middle there, it says
[5] additional test results for Butterball turkeys,
[6] yields on browning, 98 percent to 99 percent; color
[7] and texture, outstanding. Dr. Hussain has the
[8] samples. Is that true or false?
[9] A: This is what he's telling. I don't have
[10] any supporting document to say that these are the
[11] yields.
[12] Q: Okay. Well, I mean do you think that it
[13] would be good business that someone trying to make
[14] their first sale to a big company like Conagra
[15] would just blatantly lie in a document that they
[16] know will go to you?
[17] MR. SCHROEDER: Objection, calls for
[18] speculation.
[19] BY THE WITNESS:
[20] A: Counsel, I don't call anybody liar.
[21] This is all salesman's pitch, and they're trying to
[22] do business.
[23] BY MR. CASTRO:
[24] Q: We'll mark this as 14. Can you identify

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[1] Q: Zone 1, 330?
[2] A: Uh-huh.
[3] Q: Celsius with steam, 330?
[4] A: It doesn't say Celsius, Counsel.
[5] Q: Look above that, Temperatures, Celsius?
[6] A: Right.
[7] Q: Zone 3, 280, do you see that?
[8] A: Correct.
[9] Q: Do you see where it says yield, does
[10] that say 97.4 percent?
[11] A: Correct.
[12] Q: Internal temperature, 36 degrees?
[13] A: Correct.
[14] Q: And you may have seen this document
[15] before?
[16] A: Possible.
[17] Q: Those are some more tests done with
[18] Armour Swift turkey breast, correct?
[19] A: Possible.
[20] Q: Well, did you provide this turkey
[21] breast, or did Mr. McDonough?
[22] A: One of us would have provided that.
[23] Q: So earlier when you said you only
[24] provided product once —

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[1] that document, that or the page attached to it?
[2] A: This is a Unitherm Stainless Steel
[3] document fax cover sheet to Ms. Lissa Schaeffer, is
[4] that how you say that, from Jim Hutchison, company
[5] named Proctor & Schwartz, fax number, number of
[6] pages to "Dear Lisa —
[7] Q: You don't have to read it. Have you
[8] ever seen that page before? It's dated at the
[9] bottom October 14, 1993.
[10] A: My name is there. It says, "Remove Syed
[11] Hussain's name and replace it with Mike McDonough."
[12] Q: Have you ever seen that page before
[13] bates stamped U-06220? That's at the bottom.
[14] A: I may have, Counsel.
[15] Q: What about the next page, have you seen
[16] that document before? That document, I'll state on
[17] the record, is a product, it says, all dipped
[18] turkey breast (skin on) Swift, supplied by Swift,
[19] date, 10-14-93. Have you seen those test results
[20] before?
[21] A: May have. I don't recall.
[22] Q: And those test results show, what, a
[23] cook time of 7.5?
[24] A: Right, correct.

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[1] A: I said I went and did the test once. I
[2] was only in the Unitherm facility once.
[3] Q: But I asked you whether you sent product
[4] to the facility to test.
[5] A: Possible, may have.
[6] Q: So now that this has refreshed your
[7] memory, you could have sent more product?
[8] A: Yes, possible.
[9] Q: In fact, there could have been more
[10] product than this sent, right?
[11] A: Possible.
[12] Q: Okay. I mean you're not here today to
[13] deny it, right?
[14] A: No.
[15] Q: And you won't deny that at trial, will
[16] you?
[17] A: No.
[18] Q: Did you like the results of these tests?
[19] A: Which tests are we talking about?
[20] Q: The tests with the oven and the
[21] atomization applying the Maillose, browning this
[22] product, were you pleased with those results? Were
[23] you so much so pleased that you were willing to put
[24] on a seminar for Unitherm?

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[1] You allowed them to come to your
[2] facility and put a seminar on, isn't that correct?
[3] A: As I recall, yes, if the test was good,
[4] you can come and present a seminar. Again you have
[5] to understand these are salesmen influencing us in
[6] many ways, and if there is something that they have
[7] to say —
[8] Q: Well, you're a big company. You're
[9] busy, aren't you? You are a busy person, right?
[10] You don't have time to tinker with every salesman
[11] who knocks on your door, do you?
[12] A: No.
[13] Q: No. And, in fact, you don't have time
[14] to bring someone to your place of business and show
[15] them to all your colleagues or contemporaries if
[16] what they're selling isn't worth buying, do you?
[17] A: Only if the salesman is nice and he is
[18] one that really impresses you, and Jim Hutchison
[19] was definitely that type of person.
[20] Q: Who cares about the product, right, as
[21] long as the salesman is nice?
[22] A: Sometimes if the salesman can really
[23] provide good service and they're nice, you let them
[24] in.

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[1] Q: Okay. You testified earlier, sir, that
[2] you started using Maillose in 1991?
[3] A: In various tests, yes.
[4] Q: I am going to hand you what I'll mark as
[5] No. 15. This is a document, an inter-office
[6] memorandum, from Butterball Turkey Company —
[7] that's the company I guess you worked with, right,
[8] worked for, correct?
[9] A: Correct.
[10] Q: Dated November 19, 1993, and one of the
[11] people on there is you? It's to you?
[12] A: Correct.
[13] Q: It's got J.B. Weatherspoon on there,
[14] correct?
[15] A: Correct.
[16] Q: You know J.B.?
[17] A: J.B. was the vice-president of R & D. I
[18] said that.
[19] Q: You find him to be honest?
[20] A: J.B. is a very honest person.
[21] Q: Man of integrity, isn't he?
[22] A: Man of integrity.
[23] Q: Let me go down to the fourth dot. This
[24] is that slice and serve product you were talking

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[1] about, right?
[2] A: Correct.
[3] Q: And Keith Brickey, who is he?
[4] A: He was at one time my boss.
[5] Q: In '93, he knew about the market? He
[6] knew what products were out there, right?
[7] A: Keith was always the quality assurance
[8] person.
[9] Q: He says here that "Syed Hussain to
[10] evaluate a new surface browning coloring agent
[11] called Maillose," and this is November of '93?
[12] A: Uh-huh.
[13] Q: Had you ever evaluated Maillose before
[14] the date of this memo?
[15] A: '90, '91.
[16] Q: When he says this is a new surface
[17] browning coloring agent, that goes back to when you
[18] looked at it in '90, '91?
[19] A: Right. You're saying why he is using
[20] the word new?
[21] Q: Yes.
[22] A: To him it may be new, but I already knew
[23] about that in 1990, '91.
[24] Q: Does he still work for the company?

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[1] A: He sure does.
[2] Q: And what's his title with the company?
[3] A: He is vice president of food safety.
[4] Q: I'm sorry. You worked with Gary
[5] Underwood and John Shoop back in — well, really it
[6] would have been in '91 because it was when you went
[7] over to Butterball, correct?
[8] A: No, Counsel, if you'll look back — I've
[9] known this company in the early '80s and '70s. You
[10] want me to go back that far.
[11] Q: Oh, so you worked with Maillose even in
[12] the eighties?
[13] A: No, no. You said Red Arrow. You didn't
[14] use the word Maillose.
[15] Q: What about Maillose?
[16] A: Maillose, '90, '91 when it came out, I
[17] was the first one to get it, and I have been
[18] working on Maillose since then.
[19] Q: I guess Gary Underwood will back you up
[20] on that, right?
[21] A: And there are documents that we have
[22] that can back me up that have non-disclosures with
[23] them.
[24] Q: But it was new to Keith Brickey. Did

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[1] you work for Keith Brickey in '90 and '91?
[2] A: No, I was working for — I can't recall
[3] exactly who it was, but I worked for Keith many,
[4] many times.
[5] Q: Did you work with Maillose when you were
[6] project manager for the dry sausage?
[7] A: What year did I say that was, Counsel?
[8] Q: '89 to '91.
[9] A: '90 is when we started all this. '89,
[10] possible. But I think '90, about that time, we
[11] started with Maillose.
[12] Q: It had nothing to do with you becoming
[13] product development manager for Butterball Turkey?
[14] You were already working on it before you became
[15] the manager of product development?
[16] A: Correct.
[17] Q: Prem wasn't involved with this slice and
[18] serve shelf-life product?
[19] A: Not that I recall.
[20] Q: Okay. You looked at that patent, right?
[21] What do you need to — what are the apparatus or
[22] equipment you need to produce product from this
[23] patent, the '027 Patent, Exhibit 1?
[24] A: I'm not an equipment guy.

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[1] Q: I understand.
[2] A: If you ask that, you know, I'm not going
[3] to be giving you an answer that is objective.
[4] Q: What is it that you think — you have
[5] read that patent? What do you need? Do you need
[6] something to put the smoke on, an atomizer?
[7] A: Correct.
[8] Q: You need something to remove the purge
[9] if it's got skin?
[10] A: Skin?
[11] Q: You know, if you take the skin off and
[12] you got that purge on it, you need something to
[13] remove the purge?
[14] A: Where is the skin coming from?
[15] Q: Well, if you have skin on that — you
[16] cook in the bag whole muscle meat product?
[17] A: If you cooked the product in a bag —
[18] Q: The skin will be off.
[19] A: Okay.
[20] Q: Is that right? You don't need a purge
[21] removal system?
[22] A: Are you talking about the gelatin that
[23] is covering the product? That you call skin.
[24] Q: No, no, it's purge. Do you need

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[1] something to remove the purge?
[2] A: You either wash it off or you wipe it
[3] off.
[4] Q: Okay. And then you need something to
[5] put the liquid smoke —
[6] A: Apply the liquid smoke.
[7] Q: And then you need, what, need an oven?
[8] A: Need a heating system to get the color.
[9] Q: What kind of heating system?
[10] A: Again, like I say, Counsel, I am not
[11] a — it could be open flame to convection heat to
[12] forced air oven, steam oven.
[13] Q: Okay.
[14] A: Some sort of heat source.
[15] Q: Whose idea was it to use Maillose at the
[16] Wells plant? Was it yours?
[17] A: That was my idea.
[18] Q: Now, I have seen two sets of tests. Was
[19] Prem Singh ever — do you know whether he ever knew
[20] about these tests that I've shown you today?
[21] A: Not to my recollection. He was not
[22] involved in this test. He did come to the slice
[23] and serve testing at Wells, Minnesota which I've
[24] said that before.

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[1] Q: When was that?
[2] A: You have the dates.
[3] Q: This was, what, in '94?
[4] A: '93, those testing periods when we did
[5] those tests involved Minnesota.
[6] Q: Did you notice when you observed the
[7] tests that were done on the therm oven, that you
[8] could get the desired color — the belt speed? You
[9] could slow down the belt speed or speed it up in
[10] order to get the color you wanted for the product?
[11] A: Its common knowledge, Counsel, that
[12] color is dependent on heat and transfer time.
[13] Q: That's pretty obvious, isn't it?
[14] A: Very common.
[15] Q: Yes. Is it obvious? Someone like you
[16] who knows this product and knows the process, that
[17] would be obvious, wouldn't it?
[18] A: That in order to get a color on the
[19] product, a browning, you have to have the
[20] temperature.
[21] Q: Right.
[22] A: You have this dual time?
[23] Q: Right.
[24] A: When you say obvious —

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[1] Q: You can obtain the desired color by
[2] simply slowing down or increasing the belt speed,
[3] correct?
[4] A: Those are the controls.
[5] Q: Right.
[6] A: If you slow down, you could have high
[7] yields, shrink loss.
[8] Q: All right. Now, I'm going to hand you
[9] No. 16. This is a letter to you dated November
[10] 24th, 1993 from John Shoop of Red Arrow. I ask you
[11] if you have seen that document before?
[12] A: Yes, I have and it is addressed to me.
[13] Q: The first paragraph talks about the
[14] Maillose test that was run on the caramel line at
[15] the Swift-Eckrich plant at Wells, Minnesota on
[16] November 17, 1993. Do you see that?
[17] A: Yes.
[18] Q: It says these tests were run on brown
[19] and serve, deli breasts and roast type products
[20] using Maillose, correct?
[21] A: Correct.
[22] Q: It says that sump temperatures were
[23] maintained at approximately 160 degrees Fahrenheit,
[24] the same as those used for caramel color, do you

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[1] see that?
[2] A: Correct.
[3] Q: Down below, it says temperature
[4] controller dryer No. 1, 210 degrees Fahrenheit, do
[5] you see that?
[6] A: Correct.
[7] Q: And then it says second dryer is 450
[8] degrees?
[9] A: Right.
[10] Q: Now, under those operating parameters —
[11] and then you have belt speeds?
[12] A: Right.
[13] Q: With those operating parameters listed,
[14] which ones of those are outside the Claim No. 1 in
[15] the '027 Patent?
[16] MR. SCHROEDER: Objection, beyond the
[17] competency of the witness.
[18] BY THE WITNESS:
[19] A: Again, like I said, I'm not an oven
[20] person. I'm not even following your question.
[21] You're saying this is what is written. I am
[22] saying, yes, this is what is written.
[23] BY MR. CASTRO:
[24] Q: And you read the patent?

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[1] A: I didn't memorize the patent, but I read
[2] it.
[3] Q: Read Claim 1.
[4] A: Okay.
[5] Q: By the way, that product that you
[6] produced, that was golden brown, right? November
[7] 24th, these tests that were run, that product that
[8] you were trying — the color you were trying to
[9] achieve was golden brown, correct?
[10] A: Yes.
[11] Q: And you did achieve that, correct?
[12] A: That's my recollection.
[13] Q: Okay. Now, I want you — you've read
[14] that and I want you to read Claim No. 1 of the
[15] patent and tell me how the operating parameters as
[16] outlined on this November 24th letter, how they're
[17] any different than what's claimed in Claim No. 1 of
[18] the '027 Patent?
[19] A: There is no temperatures in Claim
[20] No. 1 and there are temperatures in this document.
[21] Q: Okay.
[22] A: That's the subtle difference I see.
[23] Q: How about go down to Claim 13 and 14, do
[24] you see temperatures there?

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[1] A: Yes, 100 C to 290 C.
[2] Q: That would fall within these parameters,
[3] correct?
[4] MR. SCHROEDER: I still object to this as
[5] beyond the competency of the witness.
[6] MR. CASTRO: All right. You can have that
[7] standing objection.
[8] BY MR. CASTRO:
[9] Q: That falls within the parameters of the
[10] patent, correct?
[11] A: Yes.
[12] Q: Anything you see in this letter that
[13] falls outside the claims that you've just read?
[14] And if there is, please tell me.
[15] MR. SCHROEDER: Objection, beyond the
[16] competency of the witness.
[17] BY THE WITNESS:
[18] A: To me, this letter is a recap.
[19] BY MR. CASTRO:
[20] Q: Right.
[21] A: Of the test that was done by John Shoop
[22] at the Wells, Minnesota facility, okay. And when
[23] you run a test, you have several data that is
[24] collected and settings are described to complete

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[1] the process of how the test was completed. That's
[2] all it means to me here. That within these
[3] parameters and the residence time, this is what he
[4] did ending in the results that he got.
[5] Q: And everything that he discusses within
[6] the parameters falls within the claims you just
[7] read in the '027 Patent?
[8] MR. SCHROEDER: Objection.
[9] BY THE WITNESS:
[10] A: Again I only read 1 and 13.
[11] BY MR. CASTRO:
[12] Q: You read those claims. Did you see
[13] anything that fell outside of those claims?
[14] A: Again, as I said, the temperatures and
[15] the settings, these are in here in Fahrenheit and
[16] those are in Celsius.
[17] Q: And you don't know how to convert those?
[18] A: I know how to convert them, but I am not
[19] going to do that right now.
[20] Q: I'm asking you to convert it right now.
[21] Would it fall within those parameters? He can
[22] convert it now.
[23] MR. SCHROEDER: He is not here as an expert.
[24] Anybody can do temperature conversions.

[1] Q: Is that a yes?
[2] A: It was brought to my attention, yes,
[3] that it was — it's a possible fire hazard.
[4] Q: You ended up scheduling a seminar for
[5] Unitherm, is that correct?
[6] A: That's correct.
[7] Q: And you even had an agenda, is that
[8] correct? Do you recall that?
[9] A: My recollection is at the request of Jim
[10] Hutchison, I asked people if they can come and
[11] listen to the person.
[12] Q: Prem Singh one of those that was going
[13] to show up, do you recall?
[14] A: A host of people. These are all my
[15] colleagues and food scientists, so when there is
[16] any seminar of this nature, we would invite as many
[17] as we can because salesmen do request if you can
[18] get the maximum participation.
[19] Q: All right. Trying to be nice, right?
[20] A: Nothing wrong with that.
[21] Q: In fact, that's a memo. Could you
[22] identify that for me?
[23] A: Yes, this is a memo.
[24] Q: It's Exhibit 17.

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[1] BY THE WITNESS:
[2] A: I can do that, too.
[3] BY MR. CASTRO:
[4] Q: It falls within the parameters of the
[5] patent, doesn't it?
[6] A: If you want me to say yes —
[7] Q: No, I want a truthful answer.
[8] A: Yes, they fall within a reasonable
[9] number.
[10] Q: Within the numbers as set forth in the
[11] claims in the '027 Patent, correct?
[12] A: Again if you want me to be precise, I
[13] can be precise. As a scientist, I'm supposed to
[14] be, but within a reasonable number.
[15] Q: And they're within that number?
[16] A: That's correct.
[17] Q: Was there a fire hazard at the Wells
[18] plant?
[19] A: In the plants, there are always fire
[20] hazards.
[21] Q: My question is when you were running
[22] these tests, did you experience a fire hazard?
[23] A: It was brought to my attention that
[24] there is a potential for fire hazard.

[1] A: Addressed to Jim Hutchison.
[2] Q: From whom?
[3] A: Written on my behalf by my
[4] secretary, Kathy Christian.
[5] Q: Was it written on your behalf with your
[6] approval?
[7] A: Sure.
[8] Q: And it says "here is a list of attendees
[9] for your meeting at Armour Swift-Eckrich on
[10] Tuesday, January 25th, 1994," right?
[11] A: These are the people who have confirmed
[12] that they possibly will attend.
[13] Q: Well, it says attendees. It doesn't say
[14] that those that have confirmed that they possibly
[15] will attend, does it?
[16] A: "Here is a list of attendees for your
[17] meeting." This is meeting that Jim requested. I
[18] am saying here are the people that I have contacted
[19] or agreed upon coming to this meeting.
[20] Q: Who is listed? Who is the second name
[21] from the bottom?
[22] A: It's Prem Singh.
[23] Q: Did he show up for that meeting?
[24] A: To my recollection — I myself — my

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(1) recollection is I was there for a brief time.
(2) Q: And you don't recall whether he was
(3) there or not?
(4) A: I don't recall that.
(5) Q: Do you know who else showed up? Did Joe
(6) Bohac, if you remember?
(7) A: Possible he may have shown up. I don't
(8) recall.
(9) Q: What about Chris Bugaj?
(10) A: Yes, Chris Bugaj did show up.
(11) Q: Does he still work for the company?
(12) A: She works for the company.
(13) Q: Oh, Chris, she is a —
(14) A: She works for the company.
(15) Q: How about Roy Cantou?
(16) A: Roy Cantou is in purchasing, and again
(17) if he showed up, I don't recall that.
(18) Q: Charlie Ferry?
(19) A: Charlie worked in that area and is no
(20) longer with the company.
(21) Q: Was he there?
(22) A: Possible.
(23) Q: What about Martha Cassens?
(24) A: Possible.

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(1) Q: Does she still work for the company?
(2) A: She does.
(3) Q: And what about Dr. Bruce Tompkin?
(4) A: Dr. Tompkin he works for the company.
(5) Q: So they're going to put on a seminar to
(6) demonstrate browning and cooking poultry products,
(7) is that correct?
(8) A: They're coming to show the equipment.
(9) Q: Let me hunt down my Exhibit, and I'll
(10) show it to you. You were there, but you don't
(11) recall for how long?
(12) A: I may have been there for a few minutes.
(13) Q: Was a video provided?
(14) A: Was a what?
(15) Q: A video.
(16) A: For showing something by Unitherm?
(17) Q: Right.
(18) A: Possible.
(19) Q: You don't recall?
(20) A: Again, like I said, we have the videos.
(21) It's a conference room with a video and computer
(22) monitors and all that.
(23) MR. CASTRO: Bob, if you don't object, can I
(24) erase this?

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(1) MR. SCHROEDER: Erase what?
(2) MR. CASTRO: My pencil questions.
(3) MR. SCHROEDER: If you can.
(4) MR. CASTRO: Only so that the record won't be
(5) too —
(6) MR. SCHROEDER: Oh, you have a clean copy?
(7) Just a second.
(8) BY MR. CASTRO:
(9) Q: So you are not familiar with the
(10) hardware that's operated at the Wells plant. That
(11) would be the ovens, Mr. Hussain?
(12) A: No, I'm not familiar with those.
(13) Q: You don't know what oven is presently
(14) operating at that plant?
(15) A: At the present time?
(16) Q: Yes, sir.
(17) A: I haven't been in the plant for a while,
(18) so I don't know.
(19) MR. CASTRO: I will probably be able to find
(20) it, Bob, once we take a break. We will mark that
(21) as No. 18.
(22) BY MR. CASTRO:
(23) Q: Sir, that is a document identified as
(24) agenda, and it has draft dated November 30, 1993.

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(1) Have you seen that document before?
(2) A: Possible. Yes, I may have.
(3) Q: Do you see the purpose there is to
(4) evaluate browning and cooking poultry products in
(5) the RapidFlow oven, define operating parameters and
(6) size a unit appropriate for Armour Swift-Eckrich
(7) needs?
(8) A: That's what it states.
(9) Q: Was that the purpose of that seminar to
(10) the best of your recollection?
(11) A: That's my recollection.
(12) Q: Do you recall additional product being
(13) browned or cooked?
(14) Let me rephrase that. Do you recall a
(15) demonstration by video or live of your whole muscle
(16) meat product being browned or cooked using the
(17) Unitherm process?
(18) A: I don't recall. Like I said, I may have
(19) been in and out of that meeting.
(20) Q: Do you recall sending turkey breasts to
(21) Mr. Hutchison?
(22) A: Yes, yes, we have. I have sent product
(23) to him before.
(24) Q: Right. Well, do you recall — and if

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[1] you look at the bottom, sir, "we'll need 10 to 12
[2] turkey breasts. Please give me your suggestions."
[3] A: Yes.
[4] Q: Do you recall sending that product?
[5] A: I've sent product to many people.
[6] That's possible.
[7] Q: Okay. So that was a sales presentation,
[8] wasn't it?
[9] A: This agenda pertains to a sales
[10] presentation.
[11] Q: Did you ever talk with Prem Singh about
[12] this sales presentation after it occurred?
[13] A: I don't recall that.
[14] Q: You could have? You just don't recall?
[15] A: Possible.
[16] Q: Do you know who is responsible for the
[17] installation of the Enersyst system at Wells?
[18] A: I don't know.
[19] Q: Do you know any problems that the
[20] company had with the Enersyst system at Wells?
[21] A: Not that I recall.
[22] Q: When you went with John Shoop to
[23] Unitherm's facility for the first testing — Strike
[24] that.

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[1] Do you know how Unitherm came up with
[2] the idea to use liquid smoke or a Maillose to brown
[3] whole muscle turkey products?
[4] A: I would not know.
[5] Q: You didn't tell them, did you?
[6] A: No.
[7] Q: What work were you doing in 1993 at the
[8] Wells plant? What was your primary focus at that
[9] plant at that time?
[10] A: Slice and serve tests.
[11] Q: Dealing with what products?
[12] A: Dealing with slice and serve products to
[13] help reduce the purge, improve the shelf life.
[14] Q: You are pointing to Exhibit 15?
[15] A: Yes.
[16] Q: At that time, you were using Maillose at
[17] that facility, weren't you?
[18] A: As a test.
[19] Q: You didn't call it the caramelization
[20] and maillosization process?
[21] A: Caramelization is the process that we
[22] use on slice and serve, so that's caramelization.
[23] Q: Did you have a maillosization process,
[24] mai-llo-si-za-tion?

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[1] A: From Maillose could have been converted
[2] to maillosization process, possible.
[3] Q: You had a process that you were using at
[4] the plant at that time, right?
[5] A: We had a caramelization process.
[6] Q: And a Maillose process, right?
[7] A: If I run the test, we call it
[8] maillosization process.
[9] Q: Because you used Maillose?
[10] A: Yes.
[11] Q: What color were you achieving there?
[12] Was it the golden brown?
[13] A: Duplicating the color of the caramel.
[14] Q: Well, my question to you is was that a
[15] golden brown?
[16] A: I don't know if that word golden brown
[17] came into the picture at that time, Counsel. I
[18] just don't think I should use the word golden brown
[19] for slice and serve product.
[20] Q: What color were you trying to achieve,
[21] do you know?
[22] A: Match the slice and serve caramelization
[23] color.
[24] Q: And what color was that?

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[1] A: Mahogany or Syed's color.
[2] Q: Well, I don't know how to describe that.
[3] A: That's a hard one.
[4] Q: Little darker than golden brown?
[5] A: Possible.
[6] Q: That's what you were trying to achieve
[7] with the slice and serve?
[8] A: Match the caramel color would be a good
[9] characterization.
[10] Q: Well, it's your testimony here today,
[11] and I'm trying to —
[12] A: Caramelization, brown, mahogany, red
[13] colors.
[14] Q: I guess Unitherm — they were trying to
[15] sell you an atomizer, right, to apply the smoke?
[16] A: Unitherm was not selling me an atomizer.
[17] Q: That proposal that I showed you earlier.
[18] A: The proposal says that. As I said, I
[19] may have looked at it. That's it.
[20] Q: Right. They were trying to sell it to
[21] you, though, right?
[22] A: That's what you're saying.
[23] Q: Well, they had a proposal with a price
[24] quote, how's that?

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[1] A: That is true.
[2] Q: And then they also had a proposal and a
[3] price quote for the oven, correct?
[4] A: That is correct.
[5] Q: Those two items could produce a golden
[6] brown product, correct?
[7] A: I didn't say that.
[8] Q: You saw the golden brown product
[9] produced in 1993 during the testing?
[10] A: At Unitherm?
[11] Q: Yes.
[12] A: I don't know if I characterized it as a
[13] golden brown color. I don't recall saying that I
[14] characterized it as a golden brown color.
[15] Q: Was that a golden brown color?
[16] A: It's a brown color.
[17] Q: That must be a term of art akin to
[18] patent law.
[19] MR. SCHROEDER: Golden brown?
[20] BY MR. CASTRO:
[21] Q: In fact, you mixed caramel and Maillose,
[22] didn't you? Here is a memo, No. 19. That's a
[23] December 29, 1993 memo from you to others including
[24] Prem Singh regarding a trip report at Wells plant,

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[1] correct?
[2] A: That is correct.
[3] Q: And you were also conducting a test with
[4] caramel and Maillose solution mixed together?
[5] A: As a variable.
[6] Q: And the color was good, is that correct?
[7] A: It's hard to recall what the color was
[8] good or — it's a reference.
[9] Q: I will refer you to paragraph three.
[10] A: Okay.
[11] Q: Let you look at that.
[12] A: Yes, the color is good.
[13] Q: Do you know why John Shoop had you go
[14] over to Unitherm and look at their machinery? Do
[15] you know why you had to look at their process?
[16] A: Pardon me?
[17] Q: Do you know why John Shoop wanted you to
[18] go look at the Unitherm process during this time
[19] period?
[20] A: He knew all the testing we were doing,
[21] so he suggested here is another oven you want to
[22] try. Nothing more than that.
[23] Q: Do you know whether John Shoop showed up
[24] for that meeting in January at your facility, the

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[1] seminar that was put on in January of '94 by
[2] Unitherm?
[3] A: I don't recall John being there. If he
[4] showed up, as I said, my recollection is I was
[5] there for a short period of time and I had to go to
[6] some meetings.
[7] Q: Why would John Shoop have been there, do
[8] you know?
[9] A: Why would John Shoop be at that meeting?
[10] Q: Yes.
[11] A: At the invitation of Jim Hutchison, or
[12] he may have talked to me on the phone.
[13] Q: Was it to discuss Maillose and liquid
[14] smoke?
[15] A: Possible.
[16] Q: This just confirms, I believe, sir, the
[17] agenda. I ask if you can identify that? Does that
[18] help you recall whether videos were shown at the
[19] seminar?
[20] A: In this letter, it's to me from Jim
[21] Hutchison.
[22] Q: Right.
[23] A: There is stuff in here that may pertain
[24] to some phone conversations.

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[1] Q: Okay.
[2] A: And when he says hands-on, I'm not sure
[3] what he means by that, and we will revise our
[4] program to include videos where we have indicated
[5] hands-on. I don't recall what the hands-on was.
[6] Q: Would the hands-on mean where you were
[7] supposed to come to their facility and do the
[8] testing hands-on, they instead made videos of the
[9] product that they ran through their oven to bring
[10] back to you?
[11] A: With me in the video?
[12] Q: Not necessarily with you.
[13] A: I don't know what he means by hands-on.
[14] Q: Could you have been in one of their
[15] videos? Do you recall being in one of their
[16] videos?
[17] A: If they were videotaping without my
[18] knowledge, I would never know that.
[19] Q: Okay. Now, it says I talked to Ron Ratz
[20] and John Shoop regarding the meeting and I
[21] understand that John will be present. Now, John
[22] doesn't sell ovens, does he?
[23] A: He sells liquid smoke.
[24] Q: Do you think that John would have been

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[1] there in order to help sell a process?
[2] A: A product.
[3] Q: What product?
[4] A: Liquid smoke.
[5] Q: As it's used with the Unitherm oven?
[6] A: It may necessarily or not. I don't
[7] know. John's presence is because John has been
[8] involved in this testing at Unitherm.
[9] Q: Right. And got you involved and let you
[10] look at the demonstrations that were being done on
[11] the product, correct?
[12] A: Counsel, I ran a test for half an hour.
[13] That's all my recollection is.
[14] Q: Well, did they discuss their products
[15] with you in conjunction with the Unitherm oven,
[16] John Shoop? Did John Shoop at this seminar or
[17] before this seminar discuss with you their products
[18] as they were used with the Unitherm oven?
[19] A: Not that I recall. To me, John is a
[20] liquid smoke person.
[21] Q: Well, I guess they wanted to use the
[22] liquid smoke in conjunction with the Unitherm oven,
[23] is that correct?
[24] A: That seems obvious that they want to

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[1] numbers because it's such a long time back.
[2] Several tests.
[3] Q: After that seminar in '94, did you speak
[4] with David Howard regarding buying the Unitherm
[5] oven and the atomizer?
[6] A: I don't recall having that kind of
[7] conversation with him.
[8] Q: Have you ever spoken to Mr. Howard since
[9] that time concerning those products?
[10] A: No, I have not, not that I recall.
[11] Q: I hand you what I've marked as Exhibit
[12] 21. Have you seen that document before?
[13] A: Yes, it is addressed to me.
[14] Q: I understand it's addressed to you. Do
[15] you recall seeing that document?
[16] A: Yes, I recall seeing this document.
[17] Q: Now, you see in the second paragraph, it
[18] says "among various exhibits, we will be showing
[19] the first in-line browning smoking system for deli
[20] turkey, crowns and hams. The product shrinkage
[21] using this system is only two and a half percent
[22] and results were achieved with a smoke time of ten
[23] minutes." Do you remember receiving that?
[24] A: The document is very familiar. I've

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[1] sell liquid smoke.
[2] Q: And Maillose?
[3] A: Which is a liquid smoke to me or a
[4] caramel coloring.
[5] Q: Okay. How many tests did you run with
[6] Red Arrow concerning whole muscle meat products at
[7] the Wells, Minnesota plant, do you recall?
[8] A: Many tests. I can't tell you how many.
[9] Can't give you a number.
[10] Q: Those tests were run using liquid smoke
[11] and Maillose, correct?
[12] A: Liquid smoke, Maillose, caramel,
[13] Maillose combinations.
[14] Q: Well, in that period of November,
[15] December of 1993, end of January and February of
[16] '94 is what I'm referring to now, and that's my
[17] question — that's what my question is pointed to.
[18] How many tests did you run on whole muscle meat
[19] products using Maillose or liquid smoke with the
[20] assistance of Red Arrow?
[21] A: Several tests. Several tests, and I
[22] can't give you a number.
[23] Q: More than five, more than ten?
[24] A: As I said, it's hard for me to say

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[1] seen it. But if you are asking me to recall this
[2] statement, I'm sorry, I don't recall that
[3] particular statement. I'm reading it now.
[4] Q: Did you put that in your file for later
[5] use?
[6] A: I don't recall that this was in my file.
[7] Q: Did you give this document to anybody
[8] else, this letter?
[9] A: Possibly to Mike McDonough or others.
[10] Q: Who else?
[11] A: I mean, as I said, I don't recall who
[12] else I would have given this document.
[13] Q: You don't recall whether you spoke to
[14] Mr. McDonough after that?
[15] A: I don't recall. All I can say is when
[16] it says international poultry exposition, it's just
[17] like a salesman or somebody inviting me to come to
[18] their board. After that I probably stopped even
[19] reading it.
[20] Q: Did you ever speak to Arnie Mikelberg
[21] regarding this Unitherm process?
[22] A: Who is Arnie Mikelberg?
[23] Q: Do you know an Arnold Mikelberg?
[24] A: I don't recall.

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[1] Q: You don't know him?
[2] A: I don't recall talking to him and that
[3] name.
[4] Q: What about Ted Berry?
[5] A: Who?
[6] Q: Ted Berry. Did you ever speak to Ted
[7] Berry about this Unitherm process?
[8] A: Not that I recall.
[9] Q: What about J.B. Weatherspoon?
[10] A: Possibly with J.B. Weatherspoon.
[11] Q: Do you recall what you spoke with J.B.
[12] Weatherspoon about this Unitherm process?
[13] A: Not in particular about this Unitherm
[14] process. I showed him the product that we produced
[15] at that test, possible.
[16] Q: I'm sorry I cut you off, go ahead. The
[17] product that was shown, you mean in '93?
[18] A: Right, I could have shown that — I am
[19] saying I could have shown that to J.B.
[20] Weatherspoon.
[21] Q: Were you aware that Unitherm brought
[22] it's oven back in the latter part of '95 and '96 to
[23] run additional tests with Conagra whole muscle meat
[24] products?

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[1] A: In the pilot plant, they used a lot of
[2] equipment, and I have seen their equipment sitting
[3] there, too.
[4] Q: Did you see their equipment being used?
[5] A: As I said, there is a lot of equipment
[6] sitting in the pilot plant, Counsel. I may have
[7] seen those.
[8] Q: But you don't recall as you sit here
[9] today?
[10] A: Not particularly that I was focusing
[11] that this is Unitherm and this is what I'm supposed
[12] to look at, no.
[13] Q: So you never had any conversations
[14] either with Prem Singh or J.B. Weatherspoon about
[15] the testing done with the Unitherm oven?
[16] A: Except that I may have shown them the
[17] product.
[18] Q: What about '95 and '96, did you have any
[19] discussions with Mr. Weatherspoon regarding the
[20] testing?
[21] A: I don't recall, no.
[22] Q: What about any testing discussions with
[23] Mr. Prem Singh in '95 or '96 about the Unitherm
[24] oven?

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[1] A: I don't recall that, no, I don't recall.
[2] MR. CASTRO: Let me confer with my client and
[3] I may be done.
[4] MR. SCHROEDER: That would be nice.
[5] (WHEREUPON, a short break was
[6] taken.)
[7] BY MR. CASTRO:
[8] Q: You know, we referred to a record
[9] earlier. These test results that would be Exhibit
[10] 10, how did those get in your file?
[11] A: I don't know if this was in my file.
[12] Did I say that it was in my file? I said I had
[13] seen this document.
[14] Q: Where had you seen it? Do you know how
[15] you received it? Did you get it when you were
[16] there?
[17] A: Again my recollection — was it in my
[18] file? I don't know that it was in my file.
[19] Q: I understand. I want to know how you
[20] saw that document. You said you had seen it
[21] before.
[22] A: Like I said in the — yesterday when we
[23] were going through the files, I saw this document.
[24] Q: Do you remember how you received that

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[1] document?
[2] A: I have no recollection of that.
[3] Q: Do you know where Charlie Ferry is now?
[4] A: Don't know. He left the company.
[5] Q: Do you know in all of your work, oh,
[6] 1988 to '95, would there be an occasion where you'd
[7] visit other competitors?
[8] A: Again what was the question?
[9] Q: Sure. In your work with Conagra, and
[10] we'll go from 1986 to 1995, would there be an
[11] occasion for you to go visit competitors, go look
[12] at their companies, confer with them on occasion?
[13] A: From 1996 to '98?
[14] Q: No, sir, from '85 to '95.
[15] A: '85 to '95, for that period, did I go to
[16] any competitor?
[17] Q: Yes.
[18] A: If I did, I don't recall.
[19] Q: How about from '95 to present, have you
[20] been to other competitors to confer or counsel
[21] concerning projects?
[22] A: No, I have not, not that I recall.
[23] MR. CASTRO: I don't think I have anything
[24] else.

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[1] **MR. SCHROEDER:** You think or —
[2] **MR. CASTRO:** No, I pass the witness.
[3] **EXAMINATION**
[4] **BY MR. SCHROEDER:**
[5] **Q:** Okay, just a few quick questions. With
[6] reference to Exhibit 1, which is the Prem Singh
[7] patent, you notice that starting with column five
[8] of this patent, we have a series of examples, and
[9] as to each example, the patent identifies a color
[10] in terms of LAB values. Do you see that?
[11] **A:** Right.
[12] **Q:** Are you able to translate those LAB
[13] values mentally into colors?
[14] **A:** No, I cannot.
[15] **Q:** Are you able to make a comparison, based
[16] on this patent, without having equipment available
[17] to you, between colors identified in this patent
[18] and the colors that you would choose when you were
[19] using Maillose?
[20] **A:** I cannot.
[21] **Q:** Do you know whether you ever achieved a
[22] golden brown color in the sense in which that term
[23] golden brown is used in the context of this patent?
[24] **A:** No, I don't know.

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[1] **Q:** You were asked some questions about
[2] Exhibit 2 and specifically Interrogatory No. 1 in
[3] this case.
[4] **A:** Yes.
[5] **Q:** And you were asked about why you were
[6] identified with reference to Interrogatory 1(b), do
[7] you recall that?
[8] **A:** Correct.
[9] **Q:** And that refers to persons having
[10] knowledge of the events set forth in parts A
[11] through C, correct?
[12] **A:** Correct.
[13] **Q:** Now, do you know which events relate to
[14] the answers given here?
[15] **A:** There were several events going on, so I
[16] would not know which event.
[17] **Q:** So is it fair to say that you may or may
[18] not have knowledge of events that underlie the
[19] answers here?
[20] **A:** Correct.
[21] **Q:** Now, the term Maillose has been used
[22] today. Do you know at what point in time Red Arrow
[23] began to refer to a product that it offered as
[24] Maillose?

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[1] **A:** My recollection is '89, '90.
[2] **Q:** Now, at some point, Red Arrow offered a
[3] product which was a low flavor smoke — liquid
[4] smoke product but not a no flavor product, do you
[5] recall that?
[6] **A:** Can you repeat that question again?
[7] **Q:** Sure. At some point in time, Red Arrow
[8] offered for sale a liquid browning agent which had
[9] a low flavor but didn't have no flavor?
[10] **A:** It's about that time, '90 — '89, '90,
[11] '91 time frame.
[12] **Q:** Then at some point, Red Arrow introduced
[13] a product that had no flavor, is that correct?
[14] **A:** That's true.
[15] **Q:** All of those products were referred to
[16] as Maillose?
[17] **A:** That's my recollection.
[18] **Q:** Now, we saw a document that was marked
[19] as an Exhibit in which I think it was dated '93
[20] when someone referred to Maillose as new, do you
[21] recall that?
[22] **A:** Yes.
[23] **Q:** Now, was that a reference to a change in
[24] Maillose at that time?

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[1] **A:** To them, it may be new. But to me, it
[2] was not new.
[3] **Q:** When they changed the flavor level of
[4] Maillose, was that about that time?
[5] **A:** Possibly, yes.
[6] **MR. SCHROEDER:** Thank you. Nothing further.
[7] **EXAMINATION**
[8] **BY MR. CASTRO:**
[9] **Q:** I want to clear this up on this answer
[10] to Interrogatories. You said you may or may not
[11] know the answer to this Interrogatory, or you may
[12] or may not know — well, I want to clarify this.
[13] Do you have personal knowledge, sir, of
[14] the answer to Interrogatory — to any part of
[15] Interrogatory answer No. 1 as shown to you earlier?
[16] Do you have any personal knowledge of any of the
[17] information contained in that answer?
[18] **A:** I don't.
[19] **MR. CASTRO:** Okay, nothing further. Do you
[20] want him to read and sign it?
[21] **MR. SCHROEDER:** Please.
[22] **MR. CASTRO:** The stipulation is reserve all
[23] objections except as to the form of the question
[24] until time of trial.

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(1) FURTHER DEPONENT SAITH NOT.
(2) UNITED STATES DISTRICT COURT
(3) WESTERN DISTRICT OF OKLAHOMA
(4) UNITHERM FOOD SYSTEMS, INC.,)
(5) an Illinois corporation, et al.,)
(6) Plaintiffs,)
(7) vs.) No. CIV 01-347-C
(8) SWIFT-ECKRICH, INC.,)
(9) Defendant.)

(10)
(11) I hereby certify that I have read the
(12) foregoing transcript of my deposition given at the
(13) time and place aforesaid, consisting of Pages 1 to
(14) 176, inclusive, and I do again subscribe and make
(15) oath that the same is a true, correct and complete
(16) transcript of my deposition so given as aforesaid,
(17) and includes changes, if any, so made by me.

(18)
(19) SYED HUSSAIN
(20)
(21) SUBSCRIBED AND SWORN TO
(22) before me this day
(23) of , 2002
(24)

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(1) STATE OF ILLINOIS)
(2)) SS:
(3) COUNTY OF WILL)
(4) I, GAIL LIVIGNI, a Notary Public within
(5) and for the County of Will, State of Illinois, and
(6) a Certified Shorthand Reporter of said state, do
(7) hereby certify:
(8) That previous to the commencement of the
(9) examination of the witness, the witness was duly
(10) sworn to testify the whole truth concerning the
(11) matters herein;
(12) That the foregoing deposition transcript
(13) was reported stenographically by me, was thereafter
(14) reduced to typewriting under my personal direction
(15) and constitutes a true, complete and correct record
(16) of the testimony given and the proceedings had;
(17) That the said deposition was taken
(18) before me at the time and place specified;
(19) That I am not a relative or employee or
(20) attorney or Counsel, nor a relative or employee of
(21) such attorney or Counsel for any of the parties
(22) hereto, nor interested directly or indirectly in
(23) the outcome of this action.
(24)

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(1) NOTARY PUBLIC
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(1) IN WITNESS WHEREOF, I do hereunto set my
(2) hand and affix my seal of office at Chicago,
(3) Illinois, this 19th day of February, 2002.
(4)
(5)
(6)
(7)
(8) Notary Public, Will County,
(9) Illinois.
(10) My commission expires 9/8/03
(11)
(12) C.S.R. Certificate No. 84-1965
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